

November 19, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

Civil Action No. 1:19-cv-00150-DMT-ARS

DEPOSITION OF: LIEUTENANT COLONEL JAMES T. STARTZELL -
November 19, 2021
(via RemoteDepo)

STATE OF NORTH DAKOTA,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

PURSUANT TO NOTICE, the deposition of LIEUTENANT COLONEL JAMES T. STARTZELL was taken on behalf of the Plaintiff in Bell County, Texas, by remote means, on November 19, 2021, at 8:34 a.m. MST, before Gail Obermeyer, Registered Professional Reporter and Notary Public within Colorado, appearing remotely from Douglas County, Colorado.

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1	REMOTE APPEARANCES	1	I N D E X (Continued)
2	For the Plaintiff:	2	INITIAL
3	PAUL M. SEBY, ESQ.	3	DEPOSITION EXHIBITS: (Confidential) REFERENCE
4	PAUL B. KERLIN, ESQ.	4	Exhibit 19 (Confidential document) 144
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9	kerlin@gtlaw.com	9	Exhibit 23 (Confidential document) 153
10	For the Defendant:	10	Bates Nos. USACE_00003112 -
11	JANE E. BOBET, ESQ.	11	USACE_00003113
12	Assistant United States Attorney	12	Exhibit 24 (Confidential document) 159
13	United States Attorney's Office/	13	Bates Nos. USACE_00023968 -
14	District of Colorado	14	USACE_00023978
15	1801 California Street, Suite 1600	15	Exhibit 25 (Confidential document) 177
16	Denver, Colorado 80202	16	Bates Nos. USACE_00023990 -
17	Email: Jane.Bobet@usdoj.gov	17	USACE_00023993
18	Also Present:	18	Exhibit 26 (Confidential document) 166
19	Erica Zilioli, Esq.	19	Bates Nos. USACE_00003114 -
20	Thomas Tracy, Esq.	20	USACE_00003115
21	Rachel Hymel	21	Exhibit 27 (Confidential document) 175
22		22	Bates No. USACE_00011780
23		23	Exhibit 28 (Confidential document) 186
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6	INITIAL	6	USACE_00009104
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1 WHEREUPON, the following proceedings
 2 were taken pursuant to the Federal Rules of Civil
 3 Procedure.
 4 * * * * *
 5 THE REPORTER: The attorneys participating
 6 in this deposition acknowledge that I am not physically
 7 present in the deposition room and that I will be
 8 reporting this deposition remotely. They further
 9 acknowledge that, in lieu of an oath administered in
 10 person, the witness will verbally declare his testimony
 11 in this matter is under penalty of perjury. The
 12 parties and their counsel consent to this arrangement
 13 and waive any objections to this manner of reporting.
 14 Please indicate your agreement by stating your name and
 15 your agreement on the record.
 16 MR. SEBY: This is counsel for the
 17 plaintiff, Paul Martin Seby, and I consent and agree.
 18 MS. BOBET: Counsel for the United States,
 19 Jane Bobet, and I agree.
 20 THE REPORTER: And, Mr. Startzell, do you
 21 declare your testimony in this matter is under penalty
 22 of perjury?
 23 THE DEPONENT: Yes.
 24 MR. SEBY: This will be the deposition of
 25 James T. Startzell, taken pursuant to prior notice and

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1 agreement of counsel. Ms. Bobet, can we agree that all
 2 objections, except as to form of the question,
 3 privilege, and responsiveness of the answer shall be
 4 reserved until the time of trial or first use of this
 5 deposition?
 6 MS. BOBET: Under the rules, I will agree
 7 that, obviously, objections not to be waived, won't be
 8 waived. I certainly won't be making gratuitous
 9 objections, but I reserve the right to make objections
 10 as they come up.
 11 LIEUTENANT COLONEL JAMES T. STARTZELL,
 12 having verbally declared his testimony in this matter
 13 is under penalty of perjury, testified as follows:
 14 EXAMINATION
 15 BY MR. SEBY:
 16 Q. Lieutenant Colonel Startzell, my name is
 17 Paul Seby. I'm both an attorney with the law firm of
 18 of Greenberg Traurig and a Special Assistant Attorney
 19 General for the State of North Dakota. And I represent
 20 the State of North Dakota. And today, I will refer to
 21 my clients collectively as "North Dakota" or the
 22 "State" -- or "State of North Dakota." You understand
 23 that you've been sworn in this morning?
 24 A. Yes.
 25 Q. Please state your full name for the

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1 record, if you would.
 2 A. James Thane Paulding Startzell.
 3 Q. James Thane --
 4 A. -- Paulding Startzell.
 5 Q. Would you spell that, please.
 6 A. Yes. P-a-u-l-d-i-n-g.
 7 Q. Thank you. And you're in the United
 8 States Army?
 9 A. Correct.
 10 Q. What is your title, sir?
 11 A. Currently, I'm a battalion commander.
 12 Q. And your rank, please?
 13 A. Lieutenant colonel.
 14 Q. Thank you. Before we begin, I'd like to
 15 go over a few ground rules, most of which are intended
 16 to help the court reporter take down everything we say.
 17 Everything we say is being written down. Because of
 18 that, I would like you to verbalize your responses,
 19 please, with a yes or a no or other answers, as opposed
 20 to a nod of your head yes or no. Also, please no
 21 uh-huhs or huh-uhs. Is that acceptable?
 22 A. I understand.
 23 Q. Likewise, it's difficult for the court
 24 reporter to take down what we're saying if we talk over
 25 each other. I will do my best not to interrupt you,

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1 and if you would please do the same, try not to
 2 interrupt me and let me finish my questions. Is that
 3 acceptable?
 4 A. Yes.
 5 Q. If you need a break, please let me know.
 6 I just ask that if there's a question pending, that you
 7 answer it, then we can take a break. I will suggest we
 8 take a break every hour or so. Is that acceptable?
 9 A. Yes.
 10 Q. If you do not understand a question,
 11 please just let me know, ask me to repeat it or
 12 rephrase it, and I will do my best to clarify what I'm
 13 trying to ask you. Okay?
 14 A. Yes.
 15 Q. And if you answer a question I have asked,
 16 I'm going to assume that you have understood the
 17 question that I'm asking. Is that understood?
 18 A. I understand.
 19 Q. Is anyone in the room with you today?
 20 A. Yes.
 21 Q. Would you please identify the individuals
 22 that are present with you?
 23 A. Jane Bobet.
 24 Q. And Ms. Bobet is your counsel?
 25 A. Yes.

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<p style="text-align: right;">Page 10</p> <p>1 Q. I'd ask you please to turn off your</p> <p>2 electronic devices so that you're not distracted or</p> <p>3 distracting me during the deposition. I'd ask that if</p> <p>4 you're relying upon some document during the deposition</p> <p>5 to answer a question -- for example, notes that you've</p> <p>6 made or emails that you have -- please let me know and</p> <p>7 identify that document for the record, just as you</p> <p>8 would if we were in a room together. Okay?</p> <p>9 A. Understood.</p> <p>10 Q. Do you have any questions about these</p> <p>11 instructions?</p> <p>12 A. No.</p> <p>13 Q. And, Lieutenant Colonel Startzell, do you</p> <p>14 understand that you're obligated to tell -- by oath to</p> <p>15 tell the truth today?</p> <p>16 A. Yes.</p> <p>17 Q. Do you understand that your deposition</p> <p>18 today has the same force and effect as if you were in</p> <p>19 front of a judge or a court?</p> <p>20 A. Yes.</p> <p>21 Q. Do you understand that portions of your</p> <p>22 deposition may be shown to the court if this case were</p> <p>23 to go to trial?</p> <p>24 A. Yes.</p> <p>25 Q. Do you understand that if you fail to tell</p>	<p style="text-align: right;">Page 12</p> <p>1 A. Yes.</p> <p>2 Q. Before your deposition, had you or I ever</p> <p>3 met or spoken?</p> <p>4 A. No.</p> <p>5 Q. Okay. What did you do to prepare for your</p> <p>6 deposition today, sir?</p> <p>7 A. So I met with my counsel on a couple</p> <p>8 occasions to talk about the process and the questions</p> <p>9 that might come up.</p> <p>10 Q. You met with them in person or otherwise?</p> <p>11 A. I met with them remotely, twice, over</p> <p>12 videoconference; and then I met with Jane Bobet</p> <p>13 yesterday in person.</p> <p>14 Q. And who was your videoconference with?</p> <p>15 A. The videoconference was with Jane Bobet,</p> <p>16 Ian Kellogg, and I believe in attendance was Erica</p> <p>17 Zilioli.</p> <p>18 Q. How long did you speak with them?</p> <p>19 A. Probably in the neighborhood of two to</p> <p>20 three hours each.</p> <p>21 Q. Each time?</p> <p>22 A. Right.</p> <p>23 Q. Did they show you documents?</p> <p>24 A. Yes.</p> <p>25 Q. Did you talk to anyone else about this</p>
<p style="text-align: right;">Page 11</p> <p>1 the truth today, that is considered perjury?</p> <p>2 A. Yes.</p> <p>3 Q. So you'll agree to tell the truth today?</p> <p>4 A. Yes.</p> <p>5 Q. So you'll also agree to provide accurate</p> <p>6 testimony?</p> <p>7 A. Yes.</p> <p>8 Q. To that end, is there anything today</p> <p>9 preventing you from providing complete, accurate, and</p> <p>10 truthful testimony?</p> <p>11 A. No.</p> <p>12 Q. Is there anything preventing you from</p> <p>13 recalling or relating details?</p> <p>14 A. Only that it's been some time since the</p> <p>15 incident.</p> <p>16 Q. Lieutenant Colonel Startzell, have you</p> <p>17 ever given a deposition before?</p> <p>18 A. No; first time.</p> <p>19 Q. Have you ever testified under oath before?</p> <p>20 A. No.</p> <p>21 Q. Have you ever testified in court before?</p> <p>22 A. No.</p> <p>23 Q. Do you understand that your testimony is</p> <p>24 under oath, the same as if you were in court and giving</p> <p>25 your testimony?</p>	<p style="text-align: right;">Page 13</p> <p>1 deposition?</p> <p>2 A. I informed my boss that I would be doing</p> <p>3 it, but none of the content.</p> <p>4 Q. And your boss/commanding officer is who?</p> <p>5 A. My boss is a guy named Colonel Justin</p> <p>6 Reese, R-e-e-s-e.</p> <p>7 Q. Is he at Fort Hood?</p> <p>8 A. He is.</p> <p>9 Q. How about anyone else besides Colonel</p> <p>10 Reese?</p> <p>11 A. No.</p> <p>12 Q. Did you review any documents prior to this</p> <p>13 deposition?</p> <p>14 A. Yes.</p> <p>15 Q. Which ones did you review?</p> <p>16 MS. BOBET: Objection. To the extent the</p> <p>17 answer calls for privileged communications, as far as</p> <p>18 documents reviewed with counsel, I'll instruct the</p> <p>19 witness not to answer.</p> <p>20 MR. SEBY: At all, or with respect to that</p> <p>21 issue?</p> <p>22 MS. BOBET: To the extent the answer would</p> <p>23 include documents reviewed with counsel, I'll instruct</p> <p>24 him not to answer, as those are privileged and work</p> <p>25 product.</p>

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1 Q. (BY MR. SEBY) Lieutenant Colonel
 2 Startzell, what documents that are not privileged did
 3 you review yourself or with your counsel?
 4 MS. BOBET: Objection. To the extent the
 5 question is asking what documents the Lieutenant
 6 Colonel reviewed with us as counsel, I'll instruct him
 7 not to answer, because the answer would be covered by
 8 attorney-client privilege and work product.
 9 Q. (BY MR. SEBY) What documents, other than
 10 those prepared by your counsel or other attorneys, did
 11 you review?
 12 A. None.
 13 Q. Are you taking the advice of your counsel,
 14 Lieutenant Colonel?
 15 A. Yes.
 16 Q. Did you review any documents on your own?
 17 A. I didn't, any time recently. I may have
 18 looked at documents for this back in -- late last year
 19 when I was initially interviewed by the U.S. Attorney's
 20 Office.
 21 Q. And "late last year" being 2020?
 22 A. Yes, approximately November or December of
 23 2020.
 24 Q. And who did you speak with at that time?
 25 A. I believe it was Jane Bobet or maybe Erica

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1 Zilioli, one of the two.
 2 Q. Do you remember which?
 3 A. I don't.
 4 Q. Did you do any research about this
 5 issue -- the issues in the current case?
 6 A. Can you explain what you mean by
 7 "research"?
 8 Q. Did you do any investigation on the
 9 internet or looking at files of any kind, other than
 10 those provided by your counsel?
 11 A. No.
 12 Q. Did you make any notes about the events
 13 involved in this case, such as a timeline or a
 14 chronology of events?
 15 A. I did.
 16 Q. And where are those notes located?
 17 A. In my work notebook.
 18 Q. And where is your work notebook?
 19 A. It's here.
 20 Q. What does "here" mean?
 21 A. Here in the room.
 22 Q. Do you have it open and in front of you?
 23 A. I do not.
 24 Q. Okay. Are you the sole author of that
 25 document, of that notebook?

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1 A. So the notes that I took were part of a
 2 discussion with my attorneys regarding trying to
 3 solidify the timeline of events.
 4 Q. And so you -- you wrote them and showed
 5 them to your attorney or attorneys, or created them as
 6 a result of discussions with your attorneys?
 7 A. Created them as a result of the
 8 discussion.
 9 Q. Okay. Lieutenant Colonel Startzell, your
 10 name is James, as I understand. And your middle name
 11 is Thane, one of your middle names?
 12 A. Correct.
 13 Q. Do you often go by Thane?
 14 A. I do.
 15 Q. Okay. Are you aware, Lieutenant
 16 Startzell, of North Dakota's case against the United
 17 States under the Federal Tort Claims Act, involving
 18 \$38 million in damages North Dakota seeks as a result
 19 of the Corps and other Federal officials' actions
 20 associated with the protests against the Dakota Access
 21 Pipeline?
 22 A. Yes.
 23 Q. Have you ever seen a copy of the Complaint
 24 filed by the State of North Dakota in this case?
 25 A. I don't think so.

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1 Q. Is that a yes or a no?
 2 A. I don't recall seeing it; so, no.
 3 Q. Are you aware the United States District
 4 Court for the District of North Dakota denied a motion
 5 to dismiss this case filed by the United States?
 6 A. Yes.
 7 Q. Have you read the court's order denying
 8 the United States' motion to dismiss?
 9 A. No.
 10 Q. Are you aware the court's -- the United
 11 States District Court for the District of North Dakota
 12 compelled discovery against the United States based
 13 upon a motion filed by the State of North Dakota?
 14 A. I understand that's what happened, but I
 15 don't know any details behind it.
 16 Q. Are you aware the United States District
 17 Court for the District of North Dakota recently denied
 18 a motion for partial and summary judgment filed by the
 19 United States?
 20 A. Yes.
 21 Q. Have you read the court's order denying
 22 the United States' motion for partial summary judgment?
 23 A. No.
 24 Q. Okay. Lieutenant Colonel Startzell, can
 25 you tell me about yourself, starting with, where were

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<p style="text-align: right;">Page 18</p> <p>1 you born?</p> <p>2 A. I was born in Frankfurt, Germany.</p> <p>3 Q. And in what year?</p> <p>4 A. 1980.</p> <p>5 Q. And what is your current address, sir?</p> <p>6 A. 7193 Tunisia Loop -- Tunisia, like the</p> <p>7 country, T-u-n-i-s-i-a -- Fort Hood, Texas 76544.</p> <p>8 Q. How long have you lived at that address,</p> <p>9 Lieutenant Colonel?</p> <p>10 A. Two-and-one-half years.</p> <p>11 Q. Where did you live prior to that</p> <p>12 residence?</p> <p>13 A. I lived in Omaha, Nebraska.</p> <p>14 Q. Can you, Lieutenant Colonel, explain and</p> <p>15 describe your educational background?</p> <p>16 A. Went to the U.S. Military Academy at West</p> <p>17 Point, bachelor's of science in civil engineering; and</p> <p>18 then after that got a master's from the Missouri</p> <p>19 University of Science and Technology in engineering</p> <p>20 management.</p> <p>21 Q. Any other post-doctorate degrees?</p> <p>22 A. Post-doctorate?</p> <p>23 Q. I'm sorry. Post-university degrees?</p> <p>24 A. Yes. Master of the arts in organizational</p> <p>25 psychology from Columbia University.</p>	<p style="text-align: right;">Page 20</p> <p>1 2010 to 2011. West Point, New York, 2011 to 2012.</p> <p>2 Fort Bliss, Texas, 2013 to 2016. Omaha, Nebraska, 2016</p> <p>3 to 2019. And Fort Hood, Texas, 2019 to the present.</p> <p>4 Q. Thank you. Have you received any</p> <p>5 commendations or awards in your career, sir?</p> <p>6 A. Yes.</p> <p>7 Q. Can you please explain and describe what</p> <p>8 those are?</p> <p>9 A. So there's an Army Achievement Medal, and</p> <p>10 I received maybe four or five of those. Army</p> <p>11 Commendation Medal, I received three or four of those.</p> <p>12 Meritorious Service Medal, three. The Bronze Star</p> <p>13 Medal, one. And the Defense Meritorious Service Medal,</p> <p>14 one.</p> <p>15 Q. Did you receive any of those as a result</p> <p>16 of your service in Omaha, Nebraska?</p> <p>17 A. Yes.</p> <p>18 Q. And what time period did you receive those</p> <p>19 while you were stationed in Omaha, Nebraska?</p> <p>20 A. I believe one was in 2019 -- or, actually,</p> <p>21 it was 2020; and then one as I left the district in</p> <p>22 2020 -- correction, it was 2017 and then 2020 --</p> <p>23 2019 -- sorry, 2017 and 2019.</p> <p>24 Q. Okay. And those two medals or two</p> <p>25 commendations and medals that you received in Omaha in</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. And was that the most recent of your</p> <p>2 degrees that you obtained?</p> <p>3 A. Yes.</p> <p>4 Q. And when did you obtain that degree in</p> <p>5 operational (sic) psychology?</p> <p>6 A. Just to clarify, organizational</p> <p>7 psychology.</p> <p>8 Q. Pardon me. Organizational.</p> <p>9 A. That was in 2013.</p> <p>10 Q. Okay. And what does that discipline</p> <p>11 involve, sir?</p> <p>12 A. Primarily concerned with leadership,</p> <p>13 organization change, organization development.</p> <p>14 Q. And with respect to your military service,</p> <p>15 Lieutenant Colonel, when did you enter the United</p> <p>16 States Army?</p> <p>17 A. 2002.</p> <p>18 Q. And that was upon graduation from West</p> <p>19 Point?</p> <p>20 A. Yes.</p> <p>21 Q. What locations have you served since you</p> <p>22 graduated from West Point?</p> <p>23 A. Fort Hood, Texas, first, from 2002 to</p> <p>24 2007. Fort Leonard Wood, Missouri, 2007 to 2008.</p> <p>25 Schweinfurt, Germany, 2008 to 2010. Norfolk, Virginia,</p>	<p style="text-align: right;">Page 21</p> <p>1 2017 and 2019, is what I heard say, what were those</p> <p>2 associated with?</p> <p>3 A. One was for the Dakota Access Pipeline</p> <p>4 space that we're talking about, and one was for service</p> <p>5 to the district for the three years that I was there.</p> <p>6 Q. And what year was the one received with</p> <p>7 respect to the Dakota Access Pipeline matter that you</p> <p>8 mentioned?</p> <p>9 A. 2017.</p> <p>10 Q. And can you explain what that commendation</p> <p>11 was with regard to the Dakota Access Pipeline, or DAPL?</p> <p>12 Was there any specific subject matter recognition</p> <p>13 associated with that commendation, sir?</p> <p>14 A. I think the best way to describe it was</p> <p>15 just leadership through the challenging situation.</p> <p>16 Q. And what events are you referring to as</p> <p>17 "the challenging situation"?</p> <p>18 A. Pretty much longer than normal hours,</p> <p>19 working and dealing with a problem set that was</p> <p>20 unconventional or not normal.</p> <p>21 Q. Okay. Have you ever received any demerits</p> <p>22 or been the subject of disciplinary action?</p> <p>23 A. No.</p> <p>24 Q. Do you have any certifications or</p> <p>25 licenses, other than your degrees?</p>

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<p style="text-align: right;">Page 22</p> <p>1 A. Yes. Professional engineer, licensed in 2 the state of Virginia, and a project management 3 professional. 4 Q. I'm sorry. That last one? 5 A. Project management professional. 6 Q. And who issues that license or 7 certification? 8 A. It's the Project Management Institute, 9 PMI. 10 Q. Are you a member of any professional 11 organizations? 12 A. Yes. 13 Q. Which ones? 14 A. PMI, American Society of Civil Engineers, 15 the Society of American Military Engineers, and 16 Association of the United States Army. 17 Q. With respect to the various commissions 18 you mentioned a moment ago, Lieutenant Colonel, what 19 are -- what are -- what were your responsibilities at 20 each of those service locations? 21 A. For my first assignment at Fort Hood, 22 Texas, I was a platoon leader, company executive 23 officer, battalion logistics officer, and a battalion 24 operations officer. For my assignment at Fort Leonard 25 Wood, I was an engineer/officer/student. For my</p>	<p style="text-align: right;">Page 24</p> <p>1 I believe that was it. 2 Q. And then did those individuals have staff 3 as well? 4 A. Yes. 5 Q. Would one of those persons on that staff 6 of that office have been Ms. Eileen Williamson? 7 A. Yes. 8 Q. And is Ms. Williamson -- was she present 9 in the Omaha District for your entire period of being 10 there? 11 A. Almost the entire period. 12 Q. And what do you mean by that? 13 A. As I recall, I think she went to work for 14 our division towards the end of my time there. And our 15 division was our higher Headquarters. 16 Q. Was she in her position under your 17 supervision during the entire period of the protests 18 associated with the Dakota Access Pipeline? 19 A. I believe so. 20 Q. Okay. And another entity you listed being 21 under your supervision in Omaha as the assistant 22 district commander was the tribal liaison, I believe; 23 is that correct? 24 A. Yes. 25 Q. And can you explain what that office did</p>
<p style="text-align: right;">Page 23</p> <p>1 assignment at Schweinfurt, Germany, I was a company 2 commander. 3 The next assignment in Norfolk, Virginia, 4 I was a project manager. The next assignment at West 5 Point, New York, I was a student. My assignment at 6 Fort Bliss, Texas, I was an engineer operations 7 officer, a brigade engineer, and a battalion operations 8 officer. My assignment in Omaha, I was a deputy 9 district commander. For assignment here most recently 10 at Fort Hood, I was the division engineer and then 11 battalion commander, to the present. 12 Q. With respect to your period of service in 13 Omaha, who reported to you, sir? 14 A. So I supervised the Public Affairs Office, 15 the tribal liaison, the small business deputy, the 16 training manager for the district, the executive 17 staff -- maybe a couple others, I'm trying to 18 remember -- the IT Department and the Human Resources 19 Department. 20 Q. Okay. And you mentioned among that list 21 that you gave, Lieutenant Colonel, the Public Affairs 22 Office. Who, in particular, while you were in Omaha, 23 did you -- who reported to you from that office? 24 A. The first chief was, I believe, Thomas 25 O'Hara. For a time, it was Captain Ryan Hignite. And</p>	<p style="text-align: right;">Page 25</p> <p>1 and who reported to you from that office? 2 A. Yeah. Our tribal liaison was named Joel 3 Ames. 4 Q. I'm sorry? 5 A. Joel Ames, A-m-e-s. 6 Q. Thank you. 7 A. And he was the primary conduit for 8 coordinating with tribal governments. 9 Q. And was he present in that position for 10 your entire station in the Omaha District? 11 A. Yes. 12 Q. And who -- who did you report to, 13 Lieutenant Colonel, while you were stationed in Omaha, 14 Nebraska as the associate district commander? 15 A. Colonel John Henderson was my direct 16 supervisor. 17 Q. And was he your direct supervisor for your 18 entire period while stationed in Omaha, Nebraska? 19 A. No. 20 Q. Can you explain what period of time he was 21 present or not present? 22 A. He was my commander from when I arrived in 23 2016 until 2017. And after that, Colonel John Hudson 24 took command of the district for the remainder of my 25 time.</p>

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1 Q. Do you recall, in 2017, the specific date
2 that Colonel Henderson was no longer your direct
3 supervisor?

4 A. I cannot, but I think it was June of 2017.

5 Q. And he was no longer your direct
6 supervisor after June of 2017 because of what?

7 A. He had completed three years in district
8 command.

9 Q. And is there something special about three
10 years in district command that you can explain further?

11 A. So it's typical for a district commander
12 to be in command for three years. And I might actually
13 be wrong about that. He may have only done two years
14 in command, but I'm not a hundred percent on that.

15 Q. Did he leave the district after June of
16 2017, the Omaha District?

17 A. Yes.

18 Q. Did he leave under any circumstances that
19 you're aware of, other than being reassigned to a
20 different location?

21 A. He was in the process of retirement, so he
22 retired at that time.

23 Q. He retired from the United States Army?

24 A. Yes.

25 Q. Do you stay in touch with Colonel

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1 Henderson?

2 A. I've corresponded with him maybe twice,
3 maybe three times, since he departed Omaha.

4 Q. Since June of 2017?

5 A. Yes.

6 Q. Do you recall when those instances were
7 that you communicated with him?

8 A. I don't.

9 Q. Were any in the last two years?

10 A. I can't recall.

11 Q. How did you communicate with him?

12 A. Christmas cards, usually family Christmas
13 cards. And I think he reached back out to me at one
14 point for something that he was looking for, as far as
15 a product from his time with me in the district.

16 Q. Can you explain what that means, looking
17 for a product?

18 A. Yeah. I think he may have asked me for
19 some information that we had talked about, but I don't
20 remember the contents. I don't remember what it was.

21 Q. Did it pertain to the Dakota Access
22 Pipeline protest or matter?

23 A. I don't remember.

24 Q. Have you spoken with him about your
25 deposition today?

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1 A. No.

2 Q. Have you spoken to him about North
3 Dakota's suit against the United States?

4 A. No.

5 Q. Lieutenant Colonel, can you describe what
6 you did -- your duties and responsibilities with
7 respect to the Dakota Access Pipeline matter?

8 A. So I was the deputy district commander.
9 And my -- in that role, my primary responsibilities
10 were acting as the chief of staff and coordinating with
11 the division chiefs for our district and providing
12 information and recommendations to the commander.

13 Q. To Colonel Henderson?

14 A. Yes. And then natural to the job was
15 solving problems that were day-to-day problems that
16 came up.

17 Q. Was Colonel Henderson ever absent from the
18 Omaha District for any period of time greater than a
19 week during your service as deputy district commander?

20 A. I don't recall, but it is likely.

21 Q. And how did you first get involved with
22 the Dakota Access Pipeline matter?

23 A. When I started as the deputy commander, I
24 had heard that there were some -- some Native American
25 tribes that were protesting the construction of the oil

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1 pipeline. And so that's when I first learned about the
2 controversy.

3 Q. And when would that have been?

4 A. That was probably June or July -- probably
5 June of 2016.

6 Q. Do you recall what -- with more
7 specificity what you're referring to?

8 A. Can you explain your question again?

9 Q. I'm asking, Lieutenant Colonel, for you to
10 elaborate on what you meant by you heard there was
11 Native American protesting of the construction of the
12 DAPL pipeline. What does that mean?

13 A. My predecessor, when I was doing my job
14 handover with him, had told me that there was a Native
15 American group that was doing a run to Omaha -- similar
16 to the Olympic relay where you hand off things along
17 the way -- and that they had completed a run, and the
18 ending destination was our Omaha District Headquarters.

19 Q. Had that run occurred by the time you took
20 your position, or was it after that?

21 A. It was shortly before I took the position.

22 Q. Okay. I'd like to ask you about certain
23 personnel I understand are associated with or employed
24 by the United States Army Corps of Engineers or the
25 United States Department of the Army during the period

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1 of time of March of 2016 to March of 2017. So I'm
2 going to indicate their name. If you would tell me if
3 you know of or know the person and what their position
4 and responsibilities are. Okay?

5 A. Understood.

6 Q. Todd Semonite?

7 A. Yes. Lieutenant General Semonite was the
8 chief of engineers, the senior officer in charge of the
9 Corps of Engineers.

10 Q. The whole Corps?

11 A. Yes.

12 Q. And did you know Mr. -- or Lieutenant
13 General Semonite?

14 A. Yes.

15 Q. Do you still maintain communications with
16 him?

17 A. No.

18 Q. Donald Jackson?

19 A. Yes. He was the deputy commander for the
20 Corps of Engineers for the Civil Works mission, I
21 believe.

22 Q. Do you know Mr. Jackson?

23 A. I have worked with him, but not much. I
24 would not say that I know him, other than working with
25 him a couple times.

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1 Q. Scott Spellmon?

2 A. Yes. He was our division commander.

3 Q. And can you explain the relationship
4 between the Omaha District and the division led by
5 Mr. Spellmon? And I apologize, I don't know his rank
6 at the moment.

7 A. Yeah. Major General Spellmon, he was the
8 division commander, which is the Headquarters above the
9 district.

10 Q. Is that defined by a region, the division?

11 A. Yes, yes. He was the commander for the
12 Northwestern Division.

13 Q. And how many districts are comprised
14 within the division?

15 A. Five.

16 Q. And so there are five district commanders
17 that report to Major General Spellmon?

18 A. Correct.

19 Q. Colonel Henderson, at that time, being
20 one?

21 A. Yes.

22 Q. Okay. And what was your professional
23 relationship with Major General Spellmon?

24 A. He was my senior writer. As the division
25 commander, he was my boss's boss.

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1 Q. And would protocol have been that you
2 communicated with Major General Spellmon or always
3 through Colonel Henderson?

4 A. Normally, communications would be through
5 the district commander. However, if the district
6 commander were traveling or if there was an urgent
7 requirement, there were times when I would communicate
8 directly with Major General Spellmon.

9 Q. Did some of those times occur during the
10 DAPL protest events of March 2016 to March 2017,
11 approximately?

12 A. I believe there were a few, yes.

13 Q. Do you stay in communication with Major
14 General Spellmon?

15 A. No.

16 Q. Craig Schmauder?

17 A. Can you say that name again, please?

18 Q. Craig Schmauder, S-c-h-m-a-u-d-e-r.

19 A. I don't recall that name.

20 Q. David Cooper?

21 A. Yes. I believe he was the Corps of
22 Engineers' counsel, potentially.

23 Q. Can you elaborate on what you mean by
24 that?

25 A. I think he was a lawyer at the Corps of

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1 Engineers Headquarters.

2 Q. Located in Washington, D.C.?

3 A. Correct.

4 Q. And did you interact with Mr. Cooper
5 during the DAPL protest events of approximately March
6 of 2016 to March of 2017?

7 A. I don't think so.

8 Q. Milt Boyd?

9 A. I'm not a hundred percent certain, but I
10 believe he was also a member of the counsel at USACE
11 Headquarters.

12 Q. Also an attorney for the Corps of
13 Engineers?

14 A. Yes.

15 Q. Jennifer Greer?

16 A. I remember her name, but I can't remember
17 her position.

18 Q. Did you ever work with Ms. Greer?

19 A. I don't recall. Not closely.

20 Q. Lowry Crook?

21 A. The name is familiar, but I don't recall
22 the relationship.

23 Q. Thomas Tracy?

24 A. Yes. Tom Tracy was the chief of our
25 counsel at the Omaha District.

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1 Q. And did you frequently interact with

2 Mr. Tracy?

3 A. Yes.

4 Q. Did that interaction include the period of

5 March of 2016 to March of 2017, approximately?

6 A. Yes.

7 Q. And did the subject matter include the

8 Dakota Access Pipeline?

9 A. Yes.

10 Q. And do you recall the last individual --

11 actually, near the last individual I'm going to ask

12 you -- Karen Durham-Aguilera?

13 A. Yes. I remember her being an SES, Senior

14 Executive Service employee. And I believe she worked

15 at Corps of Engineers Headquarters as the SES for Civil

16 Works.

17 Q. I'm sorry. SDS?

18 A. SES, Senior Executive Service. That's the

19 general officer level equivalent to civilian rank.

20 Q. Do you recall what Ms. Durham-Aguilera's

21 role and involvement with you was, involved?

22 A. I don't think that I ever worked with her

23 closely. But as the SES in charge of Civil Works, she

24 would have had knowledge of the Dakota Access Pipeline.

25 Q. So she was the -- if I understand what you

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1 were saying -- let me explain to you what I understand

2 you've said. Tell me if this is accurate, please. She

3 was the officer level equivalent, but a civilian, and

4 in charge of the Civil Works?

5 A. I believe that was her position, yes. The

6 civilian counterpart to Major General -- I forgot his

7 name. You just said it a minute ago.

8 Q. Todd Semonite?

9 A. No.

10 Q. Donald Jackson?

11 A. Jackson, yes. I believe she was the

12 civilian counterpart to Major General Jackson, with

13 oversight for Civil Works in the Corps of Engineers.

14 Q. Lieutenant Colonel Startzell, can you

15 explain what the Civil Works is within the Army Corps

16 of Engineers or the Department of the Army? I'm not

17 sure which way to characterize it. If you'd correct me

18 on that, please.

19 A. Yeah. So the Corps of Engineers is a

20 direct reporting Headquarters to the Department of the

21 Army. And its responsibilities include military

22 construction and Civil Works missions.

23 MR. SEBY: I've lost the audio.

24 MS. BOBET: Can you hear us?

25 MR. SEBY: Yes. I could tell Lieutenant

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1 Colonel Startzell was speaking, but I did not hear what

2 he said.

3 A. The Civil Works mission is primarily

4 oriented towards projects and maintenance with the

5 nation's ports and rivers.

6 Q. (BY MR. SEBY) Okay. And does that have

7 its own command structure, if you will, civilian

8 structure?

9 A. No. It's all part of the Corps of

10 Engineers.

11 Q. Who led the Civil Works -- do you call it

12 a Civil Works division or section? What's the proper

13 way to refer to the Civil Works?

14 A. I would just say it's the Civil Works

15 mission within the Corps of Engineers.

16 Q. And does it have its own leadership, at

17 least within the Civil Works mission?

18 A. Major General Jackson and Karen

19 Durham-Aguilera were the officers and civilians

20 responsible for oversight of that mission.

21 Q. And is there anyone above a civilian,

22 above Ms. Karen Durham-Aguilera, at the time of your

23 service in Omaha and concurrent with the DAPL protests?

24 A. I don't recall.

25 Q. Do you know who Jo-Ellen Darcy is?

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1 A. Yes.

2 Q. And who is she, sir?

3 A. From my recollection, she was the

4 assistant secretary of the Army for Civil Works.

5 Q. Would she have been a senior person above

6 Major General Jackson or Ms. Karen Durham-Aguilera?

7 A. Yes.

8 Q. So she was at least Ms. Aguilera's boss?

9 A. I would not say she was her boss. I would

10 say she was a senior executive branch civilian with

11 oversight of the Army's Civil Works mission.

12 Q. What would be her relationship to

13 Ms. Aguilera, hierarchy-wise, within the Department of

14 the Army?

15 A. I don't think there was a formal

16 supervisory relationship, but she was the senior

17 elected representative that would provide guidance to

18 the Army on Civil Works.

19 Q. Who's the "she" that you're referring to?

20 A. Ms. Jo-Ellen Darcy.

21 Q. Okay. And where does -- where did --

22 during her position while you were at the Omaha

23 District, where did Ms. Karen Durham-Aguilera office?

24 A. I believe her office was in USACE

25 Headquarters in Washington, D.C.

37:19-20
106
(offer
37:12-18
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ary
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<p style="text-align: right;">Page 38</p> <p>1 Q. She was at the Army Corps of Engineers</p> <p>2 Headquarters in Washington, D.C.?</p> <p>3 A. Yes, to my recollection.</p> <p>4 Q. And how about -- thank you. How about</p> <p>5 Jo-Ellen Darcy? Where did she office?</p> <p>6 A. I don't know where, but it was -- it was</p> <p>7 in Washington, D.C. I don't remember if she was in the</p> <p>8 Pentagon or a different building.</p> <p>9 Q. All right. I believe this is the last</p> <p>10 person I want to ask you about. Jason Dedosa,</p> <p>11 D-e-d-o-s-a?</p> <p>12 A. I don't recall that name.</p> <p>13 Q. Do you recall ever meeting that individual</p> <p>14 during the DAPL protests?</p> <p>15 A. No.</p> <p>16 Q. Do you recall working with an individual</p> <p>17 by that name during the DAPL protests?</p> <p>18 A. No.</p> <p>19 Q. Do you recall that individual accompanying</p> <p>20 Colonel Henderson to meet with the governor of North</p> <p>21 Dakota during that protest?</p> <p>22 A. No.</p> <p>23 Q. So are you aware of why he would have</p> <p>24 attended that meeting with Colonel Henderson and the</p> <p>25 governor of North Dakota?</p>	<p style="text-align: right;">Page 40</p> <p>1 A. C, as in Charlie --</p> <p>2 Q. C, as in Charlie, Ronald, Sierra.</p> <p>3 A. I don't recall what that stands for.</p> <p>4 Q. NWD?</p> <p>5 A. That stands for Northwestern Division.</p> <p>6 Q. CCIRS?</p> <p>7 A. I believe what you said was Charlie,</p> <p>8 Charlie, India, Romeo, Sierra?</p> <p>9 Q. Yes.</p> <p>10 A. So that would stand for Commander's</p> <p>11 Critical Information Requirements.</p> <p>12 Q. And can you explain what that means?</p> <p>13 A. Essentially, it means anything that is an</p> <p>14 important piece of information for the commander to</p> <p>15 know to make decisions.</p> <p>16 Q. Are they defined categories of types of</p> <p>17 information?</p> <p>18 A. Sometimes they're defined and documented,</p> <p>19 other times they are informal.</p> <p>20 Q. I understand that there are defined</p> <p>21 categories of CCIRS's by numeric reference -- or,</p> <p>22 pardon me, alphabetic reference. Do you recall what</p> <p>23 CCIRS "c" stands for?</p> <p>24 A. I don't recall what that CCIRS was.</p> <p>25 Q. Or "k," CCIR "k"?</p>
<p style="text-align: right;">Page 39</p> <p>1 A. No.</p> <p>2 Q. Okay. Lieutenant Colonel Startzell, I'd</p> <p>3 like to ask, for my benefit and the benefit of the</p> <p>4 record, what several acronyms are that appear to be</p> <p>5 Corps- or Army-related. If you'd help me explain what</p> <p>6 those acronyms stand for, please. CG?</p> <p>7 A. CG stands for commanding general.</p> <p>8 Q. SITREP?</p> <p>9 A. SITREP is situation report and update,</p> <p>10 essentially.</p> <p>11 Q. FYSA?</p> <p>12 A. That stands for "For Your Situational</p> <p>13 Awareness."</p> <p>14 Q. BLUF?</p> <p>15 A. Bottom line up front.</p> <p>16 Q. I'm sorry. Bottom line up front?</p> <p>17 A. Bottom line up front.</p> <p>18 Q. TAG?</p> <p>19 A. I believe that stands for "The Adjutant</p> <p>20 General," but I'm not a hundred percent sure on that.</p> <p>21 Q. GO?</p> <p>22 A. Can you say that one more time?</p> <p>23 Q. Two letters, G and O.</p> <p>24 A. Probably general officer.</p> <p>25 Q. CRS?</p>	<p style="text-align: right;">Page 41</p> <p>1 A. I don't recall.</p> <p>2 Q. How about CCIRS "s"?</p> <p>3 A. I don't recall.</p> <p>4 Q. Lieutenant Colonel Startzell, how about</p> <p>5 the acronym OPSUM?</p> <p>6 A. OPSUM stands for Operational Summary. It</p> <p>7 is usually just a summary of what has happened.</p> <p>8 Q. How about the acronym NOW?</p> <p>9 A. I believe that should be NWO, which is the</p> <p>10 abbreviation for Omaha District.</p> <p>11 Q. Thank you. WWD?</p> <p>12 A. I don't recall what that is.</p> <p>13 MR. SEBY: Okay. Would you like to take a</p> <p>14 short break?</p> <p>15 THE DEPONENT: That would be great.</p> <p>16 MR. SEBY: Sure. Why don't we plan a</p> <p>17 break of ten minutes, if that's okay with you,</p> <p>18 Ms. Bobet?</p> <p>19 MS. BOBET: That's all right with me.</p> <p>20 Thank you.</p> <p>21 MR. SEBY: Lieutenant Colonel, does that</p> <p>22 sound okay?</p> <p>23 THE DEPONENT: Sounds good.</p> <p>24 MR. SEBY: Thank you.</p> <p>25 (Recess, 9:40 a.m. to 9:52 a.m. MST.)</p>

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<p style="text-align: right;">Page 42</p> <p>1 MR. SEBY: We're back from break.</p> <p>2 Q. (BY MR. SEBY) Lieutenant Colonel</p> <p>3 Startzell, I appreciate the explanations you gave about</p> <p>4 the various individuals within the Corps -- within the</p> <p>5 Department of the Army. Is there an organizational</p> <p>6 chart, that you're aware of, that puts all this</p> <p>7 relationship between these various individuals in the</p> <p>8 hierarchy that existed at the time of your service in</p> <p>9 the Omaha District?</p> <p>10 A. I know there are. I just couldn't tell</p> <p>11 you where they exist right now.</p> <p>12 Q. Okay. Have you ever been to the state of</p> <p>13 North Dakota?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall when you went to North</p> <p>16 Dakota?</p> <p>17 A. I went there once or twice as the deputy</p> <p>18 district commander and then once on vacation.</p> <p>19 Q. And the two times -- the one or two times</p> <p>20 that you mentioned going there as district commander,</p> <p>21 do you recall when that was?</p> <p>22 A. I don't remember the timeline.</p> <p>23 Q. Was it during the period of the DAPL</p> <p>24 protest?</p> <p>25 A. No. It was after.</p>	<p style="text-align: right;">Page 44</p> <p>1 I went was the Garrison Project and then returned to</p> <p>2 Bismarck.</p> <p>3 Q. How about the Oahe Project? Have you ever</p> <p>4 been to the Oahe Project, O-a-h-e?</p> <p>5 A. I believe I did, yes.</p> <p>6 Q. And when was that, sir?</p> <p>7 A. I cannot remember, but it was after the</p> <p>8 events of the Dakota Access Pipeline.</p> <p>9 Q. And was that part of the one or two trips</p> <p>10 you took there as deputy district commander?</p> <p>11 A. I think the Oahe Project Office is</p> <p>12 actually in South Dakota. I'm trying to remember my</p> <p>13 facts. But I went to the project Headquarters, which I</p> <p>14 believe is in South Dakota, but I could be wrong on</p> <p>15 that.</p> <p>16 Q. Have you ever been to or visited the</p> <p>17 Standing Rock Sioux Tribe reservation?</p> <p>18 A. I don't believe so.</p> <p>19 Q. Lieutenant Colonel Startzell, when did you</p> <p>20 first become familiar with the Corps of Engineers</p> <p>21 regulations and policies regarding and governing the</p> <p>22 use of its lands, or lands that Congress has directed</p> <p>23 that it be responsible for?</p> <p>24 MS. BOBET: Objection, foundation. You</p> <p>25 can answer.</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. Do you recall when?</p> <p>2 A. Sometime in 2017 or '18.</p> <p>3 Q. Did you go to the site of the DAPL</p> <p>4 protests?</p> <p>5 A. No.</p> <p>6 Q. Do you recall what the subject of your</p> <p>7 trip was; trips, plural?</p> <p>8 A. Yes. I visited the Garrison Project once,</p> <p>9 which is one of the lakes up there; and I visited</p> <p>10 Minot, North Dakota, which is an Air Force base where</p> <p>11 we had construction projects.</p> <p>12 Q. And then your time on vacation, where in</p> <p>13 North Dakota did you go?</p> <p>14 A. I think I just drove through the state.</p> <p>15 Q. Do you recall your route?</p> <p>16 A. I don't.</p> <p>17 Q. Did you go to the capital city of</p> <p>18 Bismarck, North Dakota?</p> <p>19 A. I did go to Bismarck once, and I believe</p> <p>20 that was on the way to the Garrison Project.</p> <p>21 Q. Did you go to any part of the state of</p> <p>22 North Dakota south of the capital city, south of</p> <p>23 Bismarck?</p> <p>24 A. I can't remember the geography, what</p> <p>25 direction the Garrison Project was. But the only place</p>	<p style="text-align: right;">Page 45</p> <p>1 A. It would be sometime around the time that</p> <p>2 I became the deputy district commander.</p> <p>3 Q. (BY MR. SEBY) And can you describe and</p> <p>4 elaborate on the beginning of your familiarity, how</p> <p>5 that occurred?</p> <p>6 A. I probably learned about those regulations</p> <p>7 as I came on board and had discussions with the</p> <p>8 division chiefs and project managers for the Natural</p> <p>9 Resource Project. And then I attended a new deputy</p> <p>10 course for two or three days where we were given some</p> <p>11 kind of training on that particular part of the Corps'</p> <p>12 mission.</p> <p>13 Q. And where was the training held?</p> <p>14 A. It was in Louisville, Kentucky.</p> <p>15 Q. Do you recall attending that -- that</p> <p>16 training in person?</p> <p>17 A. Yes, I did.</p> <p>18 Q. What did the course material involve?</p> <p>19 A. There was a block of instruction that</p> <p>20 talked about each of the major mission areas that the</p> <p>21 Corps of Engineers is responsible for. And the Civil</p> <p>22 Works' mission was one of those blocks of instruction.</p> <p>23 And beyond that, I don't remember much about it.</p> <p>24 Q. Who were the teachers of the training</p> <p>25 program?</p>

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<p style="text-align: right;">Page 46</p> <p>1 A. I believe for that week it was the -- it</p> <p>2 was probably the Civil Works chief for the Louisville</p> <p>3 District, since they were the host for the training.</p> <p>4 Q. Is that where all of these trainings</p> <p>5 occur, in Louisville?</p> <p>6 A. Every year a different district hosts it,</p> <p>7 and the district determines who the subject matter</p> <p>8 experts are who are going to teach the courses. And</p> <p>9 that year just happened to be the Louisville District.</p> <p>10 Q. Okay. Do you recall who your -- the</p> <p>11 training instructors were with respect to the Civil</p> <p>12 Works subject matter?</p> <p>13 A. I don't.</p> <p>14 Q. Do you recall the course including</p> <p>15 instruction on the Corps regulations, as published in</p> <p>16 the Code of Federal Regulations?</p> <p>17 A. There was some discussion of it, but I</p> <p>18 don't remember to what extent.</p> <p>19 Q. Did the coursework include a copy of the</p> <p>20 Code of Federal Regulations?</p> <p>21 A. No.</p> <p>22 Q. Have you ever obtained, on your own, a</p> <p>23 copy of the Corps regulations published in the Code of</p> <p>24 Federal Regulations?</p> <p>25 A. I've seen excerpts, but I've never had a</p>	<p style="text-align: right;">Page 48</p> <p>1 or special use permitting?</p> <p>2 A. So I think I first became aware of the</p> <p>3 special use permits as a tool during the Dakota Access</p> <p>4 Pipeline events.</p> <p>5 Q. And can you elaborate on what you mean by</p> <p>6 becoming aware of those types of permits and permitting</p> <p>7 efforts?</p> <p>8 A. Yeah. I believe when Chairman Archambault</p> <p>9 was trying to do some kind of gathering or</p> <p>10 demonstration on Corps lands, I believe one of our</p> <p>11 employees raised the special use permit as a tool to</p> <p>12 allow him to do that legally. And I think that was the</p> <p>13 first time I learned of that particular tool.</p> <p>14 Q. Someone told you about it, made reference</p> <p>15 to it? Is that what you're saying?</p> <p>16 A. Yes.</p> <p>17 Q. And upon hearing that, did you undertake</p> <p>18 any training with respect to that tool or those types</p> <p>19 of permitting processes?</p> <p>20 MS. BOBET: Objection, compound.</p> <p>21 MR. SEBY: Let me rephrase it, Lieutenant</p> <p>22 Colonel Startzell.</p> <p>23 Q. (BY MR. SEBY) Upon hearing about it, did</p> <p>24 you conduct any research into what that involved?</p> <p>25 A. So I think the process for getting a</p>
<p style="text-align: right;">Page 47</p> <p>1 personal copy of the full document.</p> <p>2 Q. Did you do any self-training or self-</p> <p>3 instruction on those -- the subject matter of the Corps</p> <p>4 of Engineers regulations?</p> <p>5 A. I reviewed portions of it. I would say</p> <p>6 that was the extent of my self-training.</p> <p>7 Q. Do you recall which portions?</p> <p>8 A. I don't.</p> <p>9 Q. Were you -- did you receive instructions</p> <p>10 in Louisville at that time with respect to the Corps</p> <p>11 policies or regulations governing the use of Corps</p> <p>12 properties?</p> <p>13 A. I don't recall. There was probably some</p> <p>14 brief discussion about it.</p> <p>15 Q. Including the use of the properties by</p> <p>16 third parties?</p> <p>17 A. I don't know if that was discussed as part</p> <p>18 of it.</p> <p>19 Q. How about the Corps of Engineers</p> <p>20 regulations with respect to special use or special</p> <p>21 event permits?</p> <p>22 A. I don't recall if that was discussed.</p> <p>23 Q. Apart from your training in Louisville,</p> <p>24 what instruction did you receive with respect to the</p> <p>25 Corps policies or regulations concerning special event</p>	<p style="text-align: right;">Page 49</p> <p>1 special use permit was described for me by either the</p> <p>2 project manager or potentially one of our division</p> <p>3 chiefs.</p> <p>4 Q. And upon receiving that description, did</p> <p>5 you undertake reviewing the actual policies or</p> <p>6 regulations of the Corps of Engineers?</p> <p>7 A. I think I did see the title -- I think</p> <p>8 it's Title 36. I believe I did see the Title 36</p> <p>9 excerpts that governed that.</p> <p>10 Q. And how did you see that?</p> <p>11 A. Can you ask the question again?</p> <p>12 Q. Let me back up. Who was the individual</p> <p>13 that told you about the Title 36 regulations?</p> <p>14 A. I don't recall, but it was probably --</p> <p>15 probably the project manager, Eric Stasch, S-t-a-s-c-h.</p> <p>16 Q. And what did Mr. Stasch, or Stasch</p> <p>17 (pronouncing), say to you with respect to Title 36</p> <p>18 permitting?</p> <p>19 A. I think he just described the process for</p> <p>20 getting a permit, special use permit. But I don't</p> <p>21 recall any more detail than that.</p> <p>22 Q. And did he give you excerpts of Title 36?</p> <p>23 A. I don't know if it was him or if it was</p> <p>24 someone else who provided that to me.</p> <p>25 Q. Did you obtain or were you provided any</p>

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<p style="text-align: right;">Page 50</p> <p>1 other Corps policy documents with respect to special</p> <p>2 use permitting?</p> <p>3 A. I think it was just excerpts for Title 36</p> <p>4 governing special use permits.</p> <p>5 Q. Any -- after Mr. Stasch gave you the</p> <p>6 information you've described, did anyone else provide</p> <p>7 you with information with respect to special use</p> <p>8 permitting?</p> <p>9 A. I don't remember, but it's highly likely.</p> <p>10 Q. Do you recall it being highly likely that</p> <p>11 you received additional information with respect to</p> <p>12 special use permitting?</p> <p>13 A. Yes.</p> <p>14 Q. Who from?</p> <p>15 A. Probably our real estate division or our</p> <p>16 counsel.</p> <p>17 Q. With respect to the real estate division,</p> <p>18 who are you referring to?</p> <p>19 A. Our real estate division chief at the time</p> <p>20 was Mr. David Chipman.</p> <p>21 Q. I'm sorry. Can you spell that gentleman's</p> <p>22 name?</p> <p>23 A. Charlie, hotel, India, papa, Mike, alpha,</p> <p>24 November.</p> <p>25 Q. Thank you. Do you recall what Mr. Chipman</p>	<p style="text-align: right;">Page 52</p> <p>1 A. My understanding is the district commander</p> <p>2 normally approves those.</p> <p>3 Q. Would you agree that the purpose of a</p> <p>4 special use permit is to protect the environment,</p> <p>5 maintain law and order, and prevent damage to property</p> <p>6 owned by the United States and managed by the Army</p> <p>7 Corps of Engineers?</p> <p>8 A. That sounds like an accurate description,</p> <p>9 yes.</p> <p>10 Q. Would you agree that a permit may include</p> <p>11 conditions to prevent harm; and if harm occurs, to</p> <p>12 remediate such harms?</p> <p>13 A. Yeah. I think you can build in</p> <p>14 stipulations to the special use permit to prevent the</p> <p>15 project from being harmed.</p> <p>16 Q. Would you agree that a special use permit</p> <p>17 should be sought and obtained prior to an activity</p> <p>18 occurring on Corps-managed lands owned by the United</p> <p>19 States?</p> <p>20 MS. BOBET: I'm sorry, Paul, can you</p> <p>21 repeat the question? I missed a word in there.</p> <p>22 MR. SEBY: Would the court reporter please</p> <p>23 read back my statement?</p> <p>24 (The last question was read back as</p> <p>25 follows: "Would you agree that a special use permit</p>
<p style="text-align: right;">Page 51</p> <p>1 gave or told you about the special use permitting</p> <p>2 process?</p> <p>3 A. I cannot recall any specifics. I'm just</p> <p>4 guessing that he would be the one to do it.</p> <p>5 Q. Do you recall when Mr. Chipman told you</p> <p>6 about that?</p> <p>7 A. No.</p> <p>8 Q. Do you recall if Mr. Chipman's explanation</p> <p>9 to you about that involved the events surrounding the</p> <p>10 Dakota Access Pipeline protests?</p> <p>11 A. I think that was the reason we were</p> <p>12 discussing the special use permitting.</p> <p>13 Q. Based upon your understanding of the</p> <p>14 special use permit process, Lieutenant Colonel</p> <p>15 Startzell, can you explain what you believe to be the</p> <p>16 purpose of such permits?</p> <p>17 A. Yeah. I would say the purpose was to</p> <p>18 ensure that activities occurring on public lands that</p> <p>19 are managed by the Corps of Engineers do not harm the</p> <p>20 intended purposes of the project.</p> <p>21 Q. Are you familiar with who issues special</p> <p>22 use permits?</p> <p>23 A. Can you ask that again?</p> <p>24 Q. Are you familiar with who is supposed to</p> <p>25 issue special use permits?</p>	<p style="text-align: right;">Page 53</p> <p>1 should be sought and obtained prior to an activity</p> <p>2 occurring on Corps-managed lands owned by the United</p> <p>3 States?"</p> <p>4 A. Yes, that would be the normal process.</p> <p>5 Q. (BY MR. SEBY) Have you ever been involved</p> <p>6 with special use permitting issues, other than those</p> <p>7 associated with the Dakota Access Pipeline protests?</p> <p>8 A. No.</p> <p>9 Q. Okay. Lieutenant Colonel Startzell, did</p> <p>10 you ever meet with the chairman of the Standing Rock</p> <p>11 Sioux Tribe?</p> <p>12 A. No.</p> <p>13 Q. Did you ever speak with him on the</p> <p>14 telephone?</p> <p>15 A. I don't think so. I don't recall speaking</p> <p>16 to him.</p> <p>17 Q. Did you ever correspond with chairman --</p> <p>18 the chairman of the Standing Rock Sioux Tribe?</p> <p>19 A. I don't recall it. I don't think I did,</p> <p>20 not directly.</p> <p>21 Q. Did you meet with or speak with -- pardon</p> <p>22 me. Did you meet with any other chairman of any other</p> <p>23 Native American tribe in the district?</p> <p>24 A. I did.</p> <p>25 Q. And who would those individuals be?</p>

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<p style="text-align: right;">Page 54</p> <p>1 A. I believe I met with Chairman Fox of the</p> <p>2 Mandan, Hidatsa, Arikara Tribe. And that was sometime</p> <p>3 later after the Dakota Access Pipeline. I think he's</p> <p>4 the only one I met directly.</p> <p>5 Q. Did you speak with any other individuals</p> <p>6 who are chairmen or heads of any other Native American</p> <p>7 tribe in the district?</p> <p>8 A. No, not that I recall.</p> <p>9 Q. At any time?</p> <p>10 A. Correct.</p> <p>11 Q. Do you believe that Chairman Archambault</p> <p>12 of the Standing Rock Sioux Tribe directly called for</p> <p>13 protesters to come to North Dakota to protest the</p> <p>14 Dakota Access Pipeline?</p> <p>15 A. My understanding was that he encouraged</p> <p>16 peaceful protests.</p> <p>17 Q. And what was the subject of the protest</p> <p>18 that he was encouraging?</p> <p>19 A. My understanding was that he did not want</p> <p>20 the pipeline crossing Lake Oahe near tribal lands.</p> <p>21 Q. Is the pipeline located on tribal lands?</p> <p>22 A. To my knowledge, it doesn't cross any</p> <p>23 tribal lands.</p> <p>24 Q. What does it cross?</p> <p>25 A. So, to my awareness, it crossed Lake Oahe</p>	<p style="text-align: right;">Page 56</p> <p>1 went under the lake, also, if I'm recalling correctly.</p> <p>2 Q. Are you familiar with what kind of</p> <p>3 pipeline that is?</p> <p>4 A. I seem to remember it was a natural gas</p> <p>5 pipeline, but I can't be sure.</p> <p>6 Q. How about above ground, above water, are</p> <p>7 there any other utility structures or crossings, that</p> <p>8 you're aware of?</p> <p>9 A. Not that I know of.</p> <p>10 Q. You've never been to the site?</p> <p>11 A. Correct.</p> <p>12 Q. Not during your tenure as deputy district</p> <p>13 commander?</p> <p>14 A. I don't think I've ever been to the site.</p> <p>15 Q. Hade you ever visited any of the protest</p> <p>16 encampments associated with protesting the Dakota</p> <p>17 Access Pipeline?</p> <p>18 A. I don't think so.</p> <p>19 Q. Are you familiar with where those</p> <p>20 encampments were located?</p> <p>21 A. On the map, yes.</p> <p>22 Q. Okay. Are you aware of the Bureau of</p> <p>23 Indian Affairs?</p> <p>24 A. Yes.</p> <p>25 Q. Which agency of the United States is the</p>
<p style="text-align: right;">Page 55</p> <p>1 north of reservation lands.</p> <p>2 Q. Is the pipeline above ground or below</p> <p>3 ground?</p> <p>4 A. I believe it's both.</p> <p>5 Q. Both?</p> <p>6 A. Both above and below ground.</p> <p>7 Q. And what evidence do you have, sir, for it</p> <p>8 being above ground?</p> <p>9 A. I don't have any.</p> <p>10 Q. Okay. How about where the pipeline</p> <p>11 crosses Lake Oahe or the Missouri River? Is it above</p> <p>12 water or below?</p> <p>13 A. It's below.</p> <p>14 Q. What is your understanding of the</p> <p>15 configuration of it being below the river?</p> <p>16 A. So what I understand is using horizontal</p> <p>17 directional drilling, the pipeline was placed</p> <p>18 underneath the lake through that means.</p> <p>19 Q. The area where the pipeline crosses the</p> <p>20 lake, below the lake, are there other utilities or</p> <p>21 construction projects located in the vicinity of where</p> <p>22 the pipeline crosses underneath the Missouri River and</p> <p>23 Lake Oahe?</p> <p>24 A. I believe there was another pipeline that</p> <p>25 had been put in previously in the same vicinity that</p>	<p style="text-align: right;">Page 57</p> <p>1 Bureau of Indian Affairs associated with?</p> <p>2 A. Department of the Interior, I think.</p> <p>3 Q. What is the law enforcement role of the</p> <p>4 Bureau of Indian Affairs?</p> <p>5 A. My understanding is that they are -- their</p> <p>6 authorities involve regulating activities and personnel</p> <p>7 on tribal lands.</p> <p>8 Q. And in that regard, do they perform a law</p> <p>9 enforcement function on tribal lands?</p> <p>10 A. To my knowledge, yes.</p> <p>11 Q. Okay. Are you familiar with the name of</p> <p>12 the county within the state of North Dakota where the</p> <p>13 Corps of Engineers Oahe Project lands are included?</p> <p>14 A. I believe Morton County was the county</p> <p>15 that we dealt with most for this project.</p> <p>16 Q. I'm sorry. With respect to my question,</p> <p>17 please answer the question.</p> <p>18 A. Can you ask it again?</p> <p>19 Q. Sure. Which county in the state of North</p> <p>20 Dakota is the Dakota Access Pipeline crossing located?</p> <p>21 A. I can't be sure.</p> <p>22 Q. How about the Corps-owned and -managed</p> <p>23 lands associated with that site?</p> <p>24 A. I don't remember what counties.</p> <p>25 Q. Do you know who Darren Cruzan is?</p>

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1 A. The name does not ring a bell.

2 Q. Are you familiar with the geographic

3 location of the Standing Rock Sioux Tribe reservation?

4 A. In general, yeah. It has been some time

5 since I've seen a map with it; but, yes.

6 Q. Were the encampments protesting -- were

7 the encampments, consisting of individuals, protesting

8 the Dakota Access Pipeline located on Corps of

9 Engineers property?

10 A. I believe some of them were.

11 Q. Which ones?

12 A. Which encampments? Is that what you're

13 asking?

14 Q. Yes, sir.

15 A. So I think there was an encampment on the

16 south side of the Cannonball River and on the north

17 side. And there were several smaller encampments,

18 but -- the details of which I can't describe right now.

19 Q. Are you familiar with them by name?

20 A. I can remember some of the names, yes.

21 Q. Which were -- which camps were on the

22 north side of the Cannonball River?

23 A. I think the Oceti Sakowin Camp was north

24 of the river. And that may be the same as the Seven

25 Council Camp, or that may be different. I'm a little

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1 fuzzy on that.

2 Q. And when did you become aware of the camps

3 located on Corps land?

4 A. Sometime around August of 2016, I believe,

5 maybe July.

6 Q. Does that mean you became aware of them

7 after they began to exist?

8 MS. BOBET: Objection; foundation, assumes

9 facts.

10 A. So I knew there were encampments that were

11 starting that summer, but I cannot remember when I

12 became aware of encampments that were on Corps-managed

13 land.

14 Q. (BY MR. SEBY) But when you became aware,

15 were they in existence?

16 A. I don't remember exactly, but probably.

17 Q. Are you aware of any camps located on

18 lands other than owned by the Corps of Engineers?

19 A. Yes.

20 Q. What evidence do you have for that?

21 A. At the time of the events, I remember

22 hearing reports from law enforcement and media and our

23 own Project Office that some of the camps were off of

24 Corps land as well.

25 Q. So others told you that?

ND OBJ:
Hearsay

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1 A. Yes.

2 Q. And which ones are you referring to

3 understanding?

4 A. Which camps?

5 Q. Yes.

6 A. I can't remember the names of them.

7 Q. With respect to the camps located on the

8 Corps properties, were you involved in the

9 establishment of any conditions or requirements for the

10 operation of those camps?

11 A. Not establishing the camps, no. I was

12 involved with the special use permit discussion later

13 after they started.

14 Q. Which discussion?

15 A. Whatever discussions we had about special

16 use permitting. I don't think there was just one

17 discussion. I think it was many.

18 Q. And how many special use permits are you

19 referring to?

20 A. So I believe there were a total of three,

21 two or three.

22 Q. So you were involved in the permitting

23 process for those instances?

24 A. I would say I was aware of the permitting

25 action and I provided recommendations.

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1 Q. And who did you provide the

2 recommendations to?

3 A. To the district commander.

4 Q. Colonel John Henderson?

5 A. Yes.

6 Q. To your knowledge, did the Corps provide

7 for the following things at such camps. Did the Corps

8 provide for areas for the parking of vehicles?

9 A. I don't think so.

10 Q. How about for the disposal and burning of

11 trash?

12 A. No.

13 Q. How about for the management or disposal

14 of human waste?

15 A. No.

16 Q. How about for the provision of medical

17 services?

18 A. No.

19 Q. How about for the management of the safety

20 of structures erected?

21 A. So -- no, I don't think so.

22 Q. How about for the provision of care for

23 children or elderly individuals?

24 A. No.

25 Q. Are you aware of the Corps imposing any

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1 requirements for preventing environmental damage to the
2 Corps-managed properties?

3 A. Yes. Through the special permitting
4 process there was -- there were explanations in there
5 of what was acceptable and what was not acceptable for
6 those things.

7 Q. What evidence do you have for that, sir?

8 A. When the special use permit is requested
9 and processed, there are -- on a form you fill out
10 there are specific rules that are required to be
11 followed.

12 Q. And I understood you to say you made
13 recommendations with respect to special use permitting
14 to Colonel Henderson?

15 A. Yes.

16 Q. Lieutenant Colonel Startzell, how did you
17 make those recommendations, in what form?

18 A. Sometimes verbal, sometimes written. I
19 mean, I don't think I recall specifically for these
20 special use permits, how that discussion happened.

21 Q. And you mentioned, I believe, and correct
22 me if I'm wrong, that there were two to three special
23 use permits that you were involved in?

24 A. Yes.

25 Q. Would you please identify each of them,

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1 who you're referring to.

2 A. Sure. The first one was Chairman
3 Archambault's request to have a space to demonstrate.
4 I believe the second one was a special use permit for
5 LaDonna Brave Bull Allard. And the third was a special
6 use permit for a prayer ceremony for some elders.

7 Q. Okay. Colonel -- Lieutenant Colonel
8 Startzell, were you familiar with the demographics of
9 the people in the camps located on Corps land?

10 A. Can you describe what you mean by
11 "familiar"?

12 Q. Who were these people?

13 A. So my understanding was it was a mix of
14 people partially composed of tribal members, partially
15 composed of people who claimed Native American descent,
16 but weren't officially tribal members, and then some
17 were not related to the tribes at all.

18 Q. Which of those categories comprised the
19 majority of the occupants of the camps, to your
20 knowledge?

21 A. I'm not very sure, but I believe most of
22 the demonstrators were not members of the tribe.

23 Q. Are you familiar with a camp called the
24 Red Warrior Camp?

25 A. I remember the name, yes.

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1 Q. Are you familiar with it beyond recalling
2 the name?

3 A. No, not really. I mean, I can't really
4 remember where it was located, exactly, and I don't
5 remember who exactly occupied that camp.

6 Q. Does a person by the name of Cody Hall
7 refresh your recollection?

8 A. No.

9 Q. Is it your understanding that the Red
10 Warrior Camp was located within another camp?

11 A. I don't remember.

12 Q. Are you familiar with an organization
13 known as the AIM, or the American Indian Movement?

14 A. Yes.

15 Q. What's your understanding of that
16 organization?

17 A. My understanding of AIM was that it was a
18 group of Native Americans who -- or people who were
19 sympathetic to Native Americans who espoused violent
20 means of protesting.

21 Q. How did you become familiar with that
22 organization?

23 A. I believe I learned about it during the
24 Dakota Access Pipeline.

25 Q. Did you ever meet or speak with any

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1 individual associated with that organization?

2 A. No.

3 Q. Was it your understanding that members of
4 that association were present in camps located on Corps
5 property?

6 A. My understanding was there were a small
7 number of people who were associated with that
8 movement.

9 Q. When did you -- when did you first learn
10 that?

11 A. I don't remember.

12 Q. How did you learn that?

13 A. I can't remember the details, but it's
14 possible that I learned it through discussions with
15 either the North Dakota EOC or the local law
16 enforcement.

17 Q. What is the North Dakota EOC?

18 A. The North Dakota EOC is the Emergency
19 Operations Center.

20 Q. Where is that located?

21 A. I believe it's in Bismarck, North Dakota.

22 Q. Did you ever attend in-person meetings of
23 the North Dakota EOC?

24 A. I don't think so, no.

25 Q. Do you know what EOC stands for?

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1 A. Emergency Operations Center.

2 Q. What is your understanding of why that EOC

3 was created?

4 A. I think the governor stood up the EOC to

5 deal with the protests.

6 Q. Did you ever participate in discussions

7 during meetings of the EOC, by phone?

8 A. It's possible one or two teleconferences;

9 but I don't recall, exactly.

10 Q. You don't know?

11 A. Yeah. I don't recall, exactly.

12 Q. I'm trying to understand, when you say you

13 learned about it from the North Dakota EOC, the means

14 by which you learned of it?

15 A. So if I learned about it through the North

16 Dakota EOC, I would have gotten that information

17 through my security manager.

18 Q. Who is that individual?

19 A. Mr. Roger Roby, R-o-b-y.

20 Q. And did Mr. Roby, to your knowledge,

21 attend meetings of the North Dakota EOC?

22 A. I think he did once or twice. But

23 typically, he would call in, and he would be part of

24 their online -- their online significant activities

25 reports.

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1 Q. Was he an active participant on behalf of

2 the Corps of Engineers in the State of North Dakota's

3 Emergency Operations Center?

4 A. He actively communicated with them, I

5 would say, yes. But I don't think he attended in

6 person but once or twice, maybe.

7 Q. Who did the Army Corps of Engineers assign

8 to participate in person in those EOC meetings?

9 A. Eventually, we assigned a man named John

10 Voeller, who was one of the employees at the Oahe

11 Project Office.

12 Q. What is your understanding of

13 Mr. Voeller's role in participating in the State's EOC

14 meetings?

15 A. He was our liaison, so he would attend

16 meetings there once or twice a day, and he would share

17 information back and forth between our district and the

18 State EOC.

19 Q. And you say he eventually became that

20 person who liaised. What do you mean by

21 "eventually"?

22 A. We determined we weren't getting enough

23 information and dialogue with the State, so we decided

24 it was necessary to have someone tied in with them on

25 the ground.

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1 Q. What do you mean you weren't getting

2 enough information, if you weren't there?

3 A. So most of our information was telephonic

4 or by email, and we wanted someone who was there face

5 to face with the State.

6 Q. Are you being critical of North Dakota?

7 A. No.

8 Q. Lieutenant Colonel Startzell, during your

9 involvement in the protests on Corps property

10 associated with the Dakota Access Pipeline, did you

11 author and circulate reports on -- with any frequency?

12 A. So I would generally collect information

13 and provide that to my commander and his boss, yes.

14 Q. And in what form did you do that?

15 A. At first, I think it was just an email

16 update to my boss and to our division chiefs. And then

17 eventually I started putting together a daily SITREP or

18 it was possibly a SITREP two to three times a week.

19 Q. Were you the creator and distributor of

20 documents known as, quote, DAPL daily updates, end

21 quote?

22 A. Yes.

23 Q. And were those done as the name suggests,

24 on a daily basis?

25 A. In general, yes.

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1 Q. When did you start doing that?

2 A. I don't remember the first one. I don't

3 remember when we started them.

4 Q. When did you stop doing that?

5 A. I can't recall the date.

6 Q. Did anyone else assist you in compiling

7 those?

8 A. Yes. I would get information from various

9 people to include in the update.

10 Q. So is it fair to say that not all of the

11 information that you included you had firsthand

12 knowledge of?

13 A. Yeah, I think it's fair, as I got my

14 updates from many different sources.

15 Q. Who received your daily updates? Was

16 there a standard distribution?

17 A. Yes. I believe it always went to my

18 commander, and probably the Northwestern Division, and

19 the Headquarters USACE.

20 Q. Why did it go to the Headquarters of the

21 Army Corps of Engineers?

22 A. We were trying to pass information faster,

23 and my commander was often traveling.

24 Q. Did someone request that you include it --

25 include the Headquarters of the Army Corps of

66:10
106 (offer
66:11 for
necessary
context)

ND OBJECTION:
As to 66:20-67:6,
Foundation;
Speculation

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<p style="text-align: right;">Page 70</p> <p>1 Engineers?</p> <p>2 A. I don't remember, but it's very possible</p> <p>3 that my commander told me that or that someone from</p> <p>4 Headquarters requested to be added.</p> <p>5 Q. In your prior work as deputy division</p> <p>6 commander, was that the first time that you were asked</p> <p>7 or directed to include Senior Headquarters United</p> <p>8 States Army Corps of Engineers officials?</p> <p>9 A. I think it was the first time that I</p> <p>10 regularly did that, yes.</p> <p>11 Q. Had you ever had any communication</p> <p>12 directly with that entity prior?</p> <p>13 MS. BOBET: Objection, vague.</p> <p>14 Q. (BY MR. SEBY) Had you ever communicated</p> <p>15 with the Headquarters of the United States Army Corps</p> <p>16 of Engineers prior to your creation and distribution of</p> <p>17 DAPL daily reports or updates?</p> <p>18 A. I don't remember.</p> <p>19 Q. Did anyone outside of the Corps receive</p> <p>20 your DAPL daily updates?</p> <p>21 A. I don't remember if there was anyone else</p> <p>22 on the list, outside of the Corps.</p> <p>23 Q. Anyone else in the United States</p> <p>24 Government?</p> <p>25 A. It's possible, but I can't remember.</p>	<p style="text-align: right;">Page 72</p> <p>1 of Engineers land.</p> <p>2 Q. When you say "some," do you mean not all?</p> <p>3 A. Yeah. I don't remember the details, but I</p> <p>4 believe at least part of it was on Corps of Engineers</p> <p>5 land.</p> <p>6 Q. Have you seen pictures of the camp?</p> <p>7 A. Yes.</p> <p>8 Q. Have you seen video of the camp?</p> <p>9 A. I think I did see video at the time, yes.</p> <p>10 Q. Are you familiar with the road that was</p> <p>11 constructed on the Corps property within the Oceti</p> <p>12 Sakowin Camp?</p> <p>13 A. I vaguely remember some discussion about a</p> <p>14 road.</p> <p>15 Q. What do you recall that road looked like?</p> <p>16 A. I can't remember details.</p> <p>17 Q. Was it paved?</p> <p>18 A. I don't remember.</p> <p>19 Q. Who paid for the road?</p> <p>20 A. I don't know.</p> <p>21 Q. Who constructed the road?</p> <p>22 A. I don't know.</p> <p>23 Q. Did you authorize the construction of the</p> <p>24 road?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. Did you share it with the Standing Rock</p> <p>2 Sioux Tribe?</p> <p>3 A. I don't remember.</p> <p>4 Q. Did you share it with any non-governmental</p> <p>5 organization?</p> <p>6 A. I don't remember.</p> <p>7 Q. Did you share it with the State of North</p> <p>8 Dakota?</p> <p>9 A. I can't remember.</p> <p>10 Q. You mentioned earlier the Oceti Sakowin</p> <p>11 Camp; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. And where is that camp located -- or where</p> <p>14 was it located?</p> <p>15 A. I seem to remember that being on the north</p> <p>16 side of the Cannonball River and the largest camp.</p> <p>17 Q. I'm sorry. That last part?</p> <p>18 A. I believe it was also the largest camp, if</p> <p>19 I remember correctly.</p> <p>20 Q. Okay. And I had asked, where do you</p> <p>21 understand that camp was located?</p> <p>22 A. Yeah. I think it was on the north side of</p> <p>23 the Cannonball River.</p> <p>24 Q. And whose property was it located on?</p> <p>25 A. I believe, at least some of it, was Corps</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. Did the Corps of Engineers authorize the</p> <p>2 construction of the road?</p> <p>3 A. No.</p> <p>4 Q. Is the road located on Corps of Engineers</p> <p>5 property?</p> <p>6 A. I don't remember details about the</p> <p>7 location, so I'm unclear about that.</p> <p>8 MR. SEBY: Okay. We are another hour into</p> <p>9 the deposition. Would you like to take a break for</p> <p>10 lunch?</p> <p>11 THE DEPONENT: Yeah, that would be good.</p> <p>12 MR. SEBY: Okay. Ms. Bobet?</p> <p>13 MS. BOBET: Sure. How long are you</p> <p>14 thinking for the break?</p> <p>15 MR. SEBY: I think 30 minutes, at a</p> <p>16 minimum, would be reasonable.</p> <p>17 MS. BOBET: Thirty minutes sounds good to</p> <p>18 me. Is that good for you, Lieutenant Colonel?</p> <p>19 THE DEPONENT: Sounds good.</p> <p>20 MR. SEBY: Thank you. We'll resume in</p> <p>21 30 minutes.</p> <p>22 (Recess, 10:50 a.m. to 11:25 a.m. MST.)</p> <p>23 MR. SEBY: We're back after a brief lunch</p> <p>24 break, Lieutenant Colonel Startzell.</p> <p>25 Q. (BY MR. SEBY) I would like to now turn to</p>

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1 some exhibits that we provided to your counsel that are
2 marked numerically. And we're doing this deposition
3 remotely, as you know, and we're doing that because of
4 the pandemic. And so normally I would hand you a
5 document and ask you about it. Here, we're going to
6 put them up on the screen. And I want you to let me
7 know if you have any challenges in seeing them as we go
8 through them. There's several of them.

9 And I want to make sure you have time to
10 review them and we have time to discuss them, so I
11 don't want you to feel rushed. If there's anything you
12 need assistance with to enable you to better read them,
13 just let us know, and we'll do our best to accommodate
14 that.

15 A. Sounds good.

16 Q. Thank you. I'm going to turn now to
17 what's marked -- we've marked as Exhibit 1.

18 MR. SEBY: If you'd put that up on the
19 screen.

20 (Deposition Exhibit 1, remotely introduced
21 and provided electronically to the court reporter.)

22 Q. (BY MR. SEBY) This is an email,
23 Lieutenant (sic) Startzell, that is from Colonel John
24 Henderson. The email is dated August 15, 2016. And
25 you are noted as a recipient in the "Cc" block, amongst

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1 several individuals. Do you recognize this email?

2 A. I don't -- I don't really remember it; but
3 yeah, it looks like something we would have had.

4 Q. Do you have any reason to believe it's not
5 an email that is something you received?

6 A. No.

7 Q. Okay. Will you take a moment, please, and
8 read it. It's fairly short.

9 A. Can you go to the top, please? I'm just
10 trying to see the date on this so that it helps me
11 place it.

12 Q. You bet.

13 A. August 15th. Okay.

14 (Deponent examined document.) Okay.

15 Q. And if we could go down further,
16 Lieutenant Colonel Startzell, this is a string of
17 emails that your counsel produced to us. And I'd like
18 to go to the very beginning of it; which is at the end,
19 of course. And just refresh yourself with that, if you
20 would. It starts with another August 15 email, 2016,
21 that you're not copied on, but you did get this whole
22 string forwarded to you. So if you'd take a moment to
23 orient yourself with the chain, please.

24 A. Okay. Yeah. Can you go up from there?

25 (Deponent examined document.) Okay.

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1 MR. SEBY: So if we could start on the
2 very bottom of the email chain, please. Thank you.

3 Q. (BY MR. SEBY) I'm referring to the email
4 that's from Martha Chieply to Eileen Williamson, who
5 is, as I believe you said, an individual who works in
6 the Omaha Division and is an individual that reported
7 to you; is that correct?

8 A. Eileen Williamson is, yes. But I have a
9 question about which segment you're referring to,
10 because the one highlighted is not to Eileen
11 Williamson.

12 Q. Right.

13 MR. SEBY: The one above that, please.
14 Yes, right there, August 15th.

15 A. Okay.

16 Q. (BY MR. SEBY) And she says -- Ms. Chieply
17 is sending this to Ms. Williamson and several other
18 individuals, including Colonel Henderson. You are not
19 on this string, but I just want to ask you if you are
20 aware of what is meant by, "Jason - you have the
21 talking points"? Did you ever see or contribute to
22 whatever is being referred to as the "talking points"?

23 A. I believe -- I think the answer is yes.
24 These were probably either talking points that we
25 developed locally within the district, or they are

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1 USACE talking points that they distributed to us. But
2 I don't remember the exact talking points.

3 Q. Are they written down in physical form
4 somewhere?

5 A. I don't know; but chances are that they
6 would be, yes.

7 Q. So a document?

8 A. Most likely.

9 Q. Okay. Do you recall who the author of
10 them was?

11 A. I don't. But normally, Public Affairs
12 would draft talking points and the commander would
13 approve them.

14 Q. Okay. Did you ever discuss these with
15 Colonel Henderson?

16 A. Yes, I believe so.

17 Q. And what did you discuss?

18 A. Normally, we wanted to make sure that the
19 talking points were reflective of our positions, I
20 guess. That's pretty general, but that's what they
21 were -- the discussions were about, generally.

22 MR. SEBY: Okay. So if we could go up one
23 of the emails in the chain, please, to the email that's
24 just above this one from Eric Stasch.

25 Q. (BY MR. SEBY) This is another email,

Lieutenant Colonel James T. Startzell

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<p style="text-align: right;">Page 78</p> <p>1 Lieutenant Colonel Startzell, that you were not copied 2 on. It is a reply to the one below. And then there 3 are several individuals that have been added in the 4 "Cc" group. Do you see all that?</p> <p>5 A. Yes.</p> <p>6 MR. SEBY: And if we could go down to the 7 paragraph that is numbered 1 in that email. Right 8 there. If you could highlight that, please. Thank 9 you.</p> <p>10 Q. (BY MR. SEBY) Have you read this 11 paragraph?</p> <p>12 A. I'm reading it right now.</p> <p>13 Q. Sure. Take your time and let me know.</p> <p>14 A. (Deponent examined document.) Okay.</p> <p>15 Q. So the first sentence says, "DOJ has 16 requested a daily observation and report on no DAPL 17 work on US Government Property." Are you aware of what 18 that is referring to?</p> <p>19 A. I am not.</p> <p>20 Q. Are you aware of who at the DOJ is the 21 source of that request?</p> <p>22 A. No.</p> <p>23 Q. Are you aware of why the request was made?</p> <p>24 A. No.</p> <p>25 MR. SEBY: Okay. Then if we could</p>	<p style="text-align: right;">Page 80</p> <p>1 MR. SEBY: Okay. If we could go up, 2 please, to the email just above this, the next email in 3 the chain, which is another email from Mr. Stasch to a 4 number of Corps personnel.</p> <p>5 Q. (BY MR. SEBY) And again, this does not 6 include you in the distribution. Would you take a 7 moment, please, and read that -- the text of that email 8 starting with "All."</p> <p>9 A. (Deponent examined document.) Okay.</p> <p>10 Q. So this is explaining that an individual 11 called Mr. Stasch, represented themselves as an 12 attorney representing the Standing Rock Sioux Tribe, 13 and that there were discussions of a special events 14 permit. Are you aware of that conversation?</p> <p>15 A. I don't remember specifics about that 16 conversation, but it seems to fit the timeline for the 17 special use permit.</p> <p>18 Q. Are you familiar in the -- or, actually, 19 when did you become aware of that conversation and the 20 discussions that are referenced there?</p> <p>21 A. I don't have any recollection of when.</p> <p>22 Q. Okay. Is it your understanding that this 23 email occurs the same day that Mr. Stasch had just 24 reported to Colonel Henderson and others that there 25 were protesters on United States Government property?</p>
<p style="text-align: right;">Page 79</p> <p>1 highlight the paragraph below it that's numbered 2.</p> <p>2 Q. (BY MR. SEBY) What does that first 3 sentence of the paragraph say?</p> <p>4 A. "Protesters are setting up encampments on 5 US Government lands."</p> <p>6 Q. Lieutenant Colonel Startzell, is this the 7 first time you were told about that circumstance, in 8 this email -- by receiving this email?</p> <p>9 A. I don't remember.</p> <p>10 Q. This is from Eric Stasch, who is the 11 project manager of the Oahe Project. Is that what I 12 understood you to have said earlier?</p> <p>13 A. Yes, that was his position.</p> <p>14 Q. Okay. Do you know what he's referring to 15 by saying that -- in the couple of sentences down, that 16 this is similar to another protest on Corps property? 17 Are you familiar with that reference to LaFramboise 18 Island?</p> <p>19 A. No, I'm not.</p> <p>20 Q. Were you ever told more about that than 21 reading about it in this email?</p> <p>22 A. Not that I can recall.</p> <p>23 Q. Okay. So you're not familiar with how 24 that event was handled?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 81</p> <p>1 A. It appears that way from the email, yes.</p> <p>2 Q. And then back to the email concerning 3 Mr. Stasch above there, where it's discussing the 4 conversation Mr. Stasch had with the attorney 5 representing the Standing Rock Sioux Tribe. Had you 6 ever spoken with that individual, Peter Capasella?</p> <p>7 A. No, I never talked to him.</p> <p>8 Q. Are you familiar where he offices?</p> <p>9 A. I would -- I think I remember his office 10 not actually being in North Dakota, but I can't 11 remember specifics.</p> <p>12 Q. Did you ever hear that his office was in 13 Eugene, Oregon?</p> <p>14 A. That -- yeah, that matches what I 15 remember.</p> <p>16 Q. Okay. Who told you that?</p> <p>17 A. Either -- it was probably our counsel that 18 told us -- told me that. That would be my guess.</p> <p>19 Q. And who are you referring to?</p> <p>20 A. Potentially, Tom Tracy; maybe our tribal 21 liaison, Bill Ames.</p> <p>22 Q. And then the second paragraph below 23 Mr. Capasella's name, "He mentioned a number of Non 24 SRST people coming up to support the protest and the 25 SRST wanting to cover the encampment." What does that</p>

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<p style="text-align: right;">Page 82</p> <p>1 mean?</p> <p>2 MS. BOBET: Objection, foundation. You</p> <p>3 can answer.</p> <p>4 Q. (BY MR. SEBY) I'm asking you, what do you</p> <p>5 believe the meaning is of that latter part of the</p> <p>6 sentence, where there is a desire expressed by</p> <p>7 Mr. Capasella about the SRST wanting to cover the</p> <p>8 encampment? What is that referring to, in your</p> <p>9 understanding?</p> <p>10 A. Yeah. The way I read that, it means that</p> <p>11 the Standing Rock Sioux Tribe wanted to get a special</p> <p>12 use permit that would cover not just their tribal</p> <p>13 members, but also other people who came up for that</p> <p>14 protest.</p> <p>15 Q. And is that asking for permission to</p> <p>16 create a camp, or is it with respect to an existing</p> <p>17 camp?</p> <p>18 MS. BOBET: Objection, foundation.</p> <p>19 Q. (BY MR. SEBY) Answer the question,</p> <p>20 please.</p> <p>21 A. I don't know. I read it to mean the -- to</p> <p>22 cover the personnel that are already on the site and</p> <p>23 anyone else who might come up.</p> <p>24 Q. Okay. And then what does Mr. Stasch say</p> <p>25 in the sentence after that?</p>	<p style="text-align: right;">Page 84</p> <p>1 A. Mr. Stasch.</p> <p>2 Q. Okay. And then the last sentence of that</p> <p>3 email paragraph, please.</p> <p>4 A. "We will process locally in the normal</p> <p>5 manner. Will keep all informed on how this moves</p> <p>6 forward."</p> <p>7 Q. What is the normal manner -- what do you</p> <p>8 understand the normal manner that he's referring to?</p> <p>9 A. The way I read that, it refers to the</p> <p>10 normal process for a special use permit.</p> <p>11 Q. Is it your understanding this was a normal</p> <p>12 process with respect to getting a special use permit or</p> <p>13 not normal?</p> <p>14 A. I don't think it's something that we did</p> <p>15 often. However, I know that it was a tool that was</p> <p>16 known to be available.</p> <p>17 Q. Is it normal to volunteer to provide</p> <p>18 someone with a special use permit just based upon a</p> <p>19 conversation?</p> <p>20 A. I don't know. I would not say it happened</p> <p>21 commonly, but I don't know.</p> <p>22 Q. Is it normal to suggest you would get</p> <p>23 someone a special use permit for an event that is</p> <p>24 already underway?</p> <p>25 A. I can't really say from personal</p>
<p style="text-align: right;">Page 83</p> <p>1 A. Which sentence?</p> <p>2 Q. The sentence following the one we just</p> <p>3 discussed.</p> <p>4 A. Okay. "I related that we would be getting</p> <p>5 him a Special Event permit to cover this activity and</p> <p>6 that we would be looking for information on logistics</p> <p>7 (sanitary facilities etc.) and would be checking to</p> <p>8 make sure the area doesn't have any archeological sites</p> <p>9 that could be impacted."</p> <p>10 Q. Lieutenant Colonel Startzell, what is your</p> <p>11 understanding of the actions taken to effect the</p> <p>12 statements Mr. Stasch made in that paragraph?</p> <p>13 A. I don't understand the question. Can you</p> <p>14 ask that again?</p> <p>15 Q. What is your understanding of Mr. Stasch's</p> <p>16 actions taken, if any, to implement the statements in</p> <p>17 that paragraph?</p> <p>18 A. I don't recall exactly what actions were</p> <p>19 taken with regard to archeological sites; and the</p> <p>20 logistics, the same.</p> <p>21 Q. So you don't know that anything was done?</p> <p>22 A. So I know that he performed fairly regular</p> <p>23 visits to the project site; but outside of that, I</p> <p>24 can't speak in detail.</p> <p>25 Q. Who's "he"?</p>	<p style="text-align: right;">Page 85</p> <p>1 experience, but this is the first time I encountered</p> <p>2 this.</p> <p>3 MR. SEBY: Okay. And then if we could go</p> <p>4 to the email at the very top of the chain, please.</p> <p>5 Q. (BY MR. SEBY) So this is the email from</p> <p>6 Colonel Henderson to a number of Corps individuals.</p> <p>7 You are copied on this distribution, correct?</p> <p>8 A. Yes, it looks like I am.</p> <p>9 Q. Paragraph 1, if you could take a moment</p> <p>10 and read that, please.</p> <p>11 A. (Deponent examined document.) Okay.</p> <p>12 Q. Colonel Henderson references -- he says,</p> <p>13 "I do know that we are reporting on DAPL activities in</p> <p>14 the area back to DOJ . . ." Were you involved in those</p> <p>15 types of communications?</p> <p>16 A. Not directly.</p> <p>17 Q. What is your knowledge of them?</p> <p>18 A. I think what this is referring to is</p> <p>19 office of counsel at Headquarters USACE corresponding</p> <p>20 with DOJ, but I can't be certain.</p> <p>21 Q. Well, that last sentence of that</p> <p>22 paragraph, who is the "Tom" that Colonel Henderson is</p> <p>23 asking to confirm what exactly DOJ is requesting? Do</p> <p>24 you know who that individual is?</p> <p>25 A. I would guess Tom Tracy, our district</p>

85:5-86:4
401-402;
403; 602

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<p style="text-align: right;">Page 86</p> <p>1 counsel.</p> <p>2 Q. So Mr. Tracy is not part of the</p> <p>3 Headquarters USACE counsel office, is he?</p> <p>4 A. No, he's not.</p> <p>5 Q. Do you know what those discussions</p> <p>6 involved?</p> <p>7 A. Not really.</p> <p>8 Q. Not at all?</p> <p>9 A. No. I really don't have any recollection</p> <p>10 of details of those.</p> <p>11 Q. Okay. Is this the first time you were</p> <p>12 aware of the offering of a special use permit for the</p> <p>13 existing encampments?</p> <p>14 A. I believe so.</p> <p>15 Q. Next paragraph, please, paragraph No. 2 in</p> <p>16 that email. If you could read that, please.</p> <p>17 A. (Deponent examined document.) Okay.</p> <p>18 Q. So Colonel Henderson says there, "The</p> <p>19 special event permit is the correct way to address the</p> <p>20 encampment on US lands."</p> <p>21 Would you explain what Colonel Henderson's</p> <p>22 knowledge is of the special use permitting regulations</p> <p>23 at Title 36 and Corps policies involving special use</p> <p>24 permits. Did he have any training different than</p> <p>25 yours?</p>	<p style="text-align: right;">Page 88</p> <p>1 A. (Deponent examined document.) Okay.</p> <p>2 Q. He's saying -- what is your understanding</p> <p>3 of what his instruction is?</p> <p>4 A. The way I read this is to have law</p> <p>5 enforcement with any future visits if -- you know, if</p> <p>6 there is a violation of the permit. That's the way I</p> <p>7 read that.</p> <p>8 Q. And not just any law enforcement. Doesn't</p> <p>9 it say a specific type of law enforcement?</p> <p>10 A. Yes. Local law enforcement.</p> <p>11 Q. What do you understand that to be</p> <p>12 referring to?</p> <p>13 A. I would -- I would say that means the</p> <p>14 local police department or sheriff's office.</p> <p>15 Q. And who would that be?</p> <p>16 A. I believe it's Morton County Sheriff's</p> <p>17 Office.</p> <p>18 Q. At this time, would you know who the</p> <p>19 sheriff of Morton County is?</p> <p>20 A. I don't know if I knew at the time, but I</p> <p>21 believe I did. I believe I knew at this time that it</p> <p>22 was Sheriff Kirchmeier.</p> <p>23 Q. Did you ever -- were you ever involved in</p> <p>24 any communications with Sheriff Kirchmeier as to this</p> <p>25 day and this suggestion about a potential issuance of a</p>
<p style="text-align: right;">Page 87</p> <p>1 MS. BOBET: Objection; foundation,</p> <p>2 compound.</p> <p>3 MR. SEBY: Let me break up the question.</p> <p>4 Q. (BY MR. SEBY) Lieutenant Colonel</p> <p>5 Startzell, are you aware that Colonel Henderson ever</p> <p>6 had any training with regard to special use permitting?</p> <p>7 A. So he attended a new commander course,</p> <p>8 much like I attended a new deputy commander course.</p> <p>9 And he had the benefit of having some year or year-plus</p> <p>10 of experience as a district commander at this point.</p> <p>11 Q. Did he ever discuss special use permitting</p> <p>12 in other instances with you?</p> <p>13 A. Not that I can recall.</p> <p>14 Q. Are you aware of any special use</p> <p>15 permitting or special event permitting that Colonel</p> <p>16 Henderson was responsible for?</p> <p>17 A. Not that I'm aware of.</p> <p>18 Q. Are you aware of Colonel Henderson having</p> <p>19 any additional training on special use permitting?</p> <p>20 A. Not that I'm aware of.</p> <p>21 Q. Are you aware of whether Colonel Henderson</p> <p>22 ever read Title 36 regulations or Corps policies with</p> <p>23 respect to special use permitting?</p> <p>24 A. I don't know. Not that I'm aware of.</p> <p>25 Q. Okay. Next sentence.</p>	<p style="text-align: right;">Page 89</p> <p>1 special use permit?</p> <p>2 A. I don't recall the details. I know that</p> <p>3 we were in communication with him from the Project</p> <p>4 Office level and at my level, but I don't remember the</p> <p>5 timeline with those communications.</p> <p>6 Q. At your level means, were you speaking</p> <p>7 with him?</p> <p>8 A. I talked and corresponded with him a</p> <p>9 couple times.</p> <p>10 Q. How about at this time?</p> <p>11 A. I don't remember.</p> <p>12 Q. What is Colonel Henderson referring to,</p> <p>13 "if this becomes a problem"? What does that mean?</p> <p>14 MS. BOBET: Objection, foundation.</p> <p>15 Q. (BY MR. SEBY) Well, read the sentence, if</p> <p>16 you would, because I think that may help.</p> <p>17 A. "With regard to enforcing the provisions</p> <p>18 of the permit, if this becomes a problem, I'd ensure</p> <p>19 that local law enforcement is involved with any site</p> <p>20 visit that we are required to make."</p> <p>21 Q. What does that mean, in your</p> <p>22 understanding?</p> <p>23 MS. BOBET: Objection, foundation.</p> <p>24 MR. SEBY: I'm asking for his</p> <p>25 understanding of what that means.</p>

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1 A. Yeah. I mean, the way I read that, if
 2 there's any concerns with the protesters becoming
 3 unruly or meeting the requirements of the permit, that
 4 law enforcement should accompany USACE personnel.
 5 Q. (BY MR. SEBY) Local law enforcement?
 6 A. Yes.
 7 Q. And "enforcing the provisions of the
 8 permit," that's referencing a permit that's just being
 9 requested verbally, right?
 10 MS. BOBET: Objection, foundation.
 11 Q. (BY MR. SEBY) Is that your understanding?
 12 A. Can you ask that question again?
 13 Q. What permit is he referring to?
 14 MS. BOBET: Objection, foundation.
 15 A. So the way I read this, he's referring to
 16 the special use permit that is going to be processed.
 17 Q. (BY MR. SEBY) Has it been issued?
 18 A. At this point in time, I don't think it's
 19 been issued, no.
 20 Q. Okay. And if we could go to the
 21 concluding paragraph of that email, please.
 22 A. Okay.
 23 Q. There's a reference to, "The rest of us
 24 will work to provide the support you need when you need
 25 it in conjunction with Operations Division

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1 leadership." Who is that referring to?
 2 MS. BOBET: Objection, foundation.
 3 A. The Operations Division leadership, is
 4 that your question?
 5 Q. (BY MR. SEBY) Yes. I'm asking what
 6 reference that is -- who is the Operations Division
 7 leadership?
 8 A. That would be Keith Fink and his support
 9 staff.
 10 Q. And we've not spoken about Mr. Fink.
 11 Could you explain who he is and what his role was?
 12 A. Yes. Keith Fink was the Operations
 13 Division chief, so his division was responsible for the
 14 existing projects along the river, the lakes and bank
 15 stabilization projects along the river.
 16 Q. Is Mr. Fink part of the Omaha District?
 17 A. Yes.
 18 Q. Okay. And wrapping up the discussion of
 19 Exhibit 1, if we could go back to paragraph 2 above,
 20 please, just for a moment. That first sentence,
 21 please, if you would read that.
 22 A. (Deponent examined document.) Okay.
 23 Q. Based on your experience and your
 24 training, do you agree with that statement, that, "The
 25 special event permit is the correct way to address the

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1 encampments on US lands"?
 2 A. At the time, that was the tool that I knew
 3 of that was available for use.
 4 Q. Yes? Is that a yes?
 5 A. At the time, I probably agreed with that
 6 statement.
 7 Q. How about today?
 8 A. Yeah, I think the special use permit still
 9 has merit.
 10 Q. Did you believe at the time that there
 11 were any other options or ways to address the
 12 circumstances?
 13 A. Yes.
 14 Q. And what were those other ways?
 15 A. The other options were to call some law
 16 enforcement entity and have them remove trespassers.
 17 Q. What law enforcement entities are you
 18 referring to?
 19 A. Normally, that would be local law
 20 enforcement.
 21 Q. And in this instance, that would have been
 22 who?
 23 A. I believe that would have also been
 24 Sheriff Kirchmeier's office.
 25 Q. Morton County, North Dakota?

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1 A. Yes.
 2 Q. And did you do that or did Colonel
 3 Henderson do that?
 4 A. I don't recall.
 5 Q. Did anyone in the Corps do that?
 6 A. I don't have a recollection of that.
 7 Q. Now, a moment ago you said that -- when
 8 talking about other options, you would call law
 9 enforcement -- you clarified that as local law
 10 enforcement -- for removal of trespassers. Why do you
 11 use that word, "trespassers"?
 12 A. Because at the time when they set up, they
 13 didn't have a permit approved.
 14 Q. A permit approved?
 15 A. Right.
 16 Q. Okay. Lieutenant Colonel Startzell, are
 17 there any other options that were discussed at this
 18 time?
 19 A. Not that I can remember.
 20 MR. SEBY: Okay. If we could turn
 21 to Exhibit -- what's marked Exhibit 2, please.
 22 (Deposition Exhibit 2, remotely introduced
 23 and provided electronically to the court reporter.)
 24 Q. (BY MR. SEBY) Can you read that?
 25 A. Can you increase the -- yeah, there we go.

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<p style="text-align: right;">Page 94</p> <p>1 Thank you.</p> <p>2 Q. This is an email chain, also. The latest</p> <p>3 one is Monday, August 15th of 2016. Do you see that?</p> <p>4 A. I do.</p> <p>5 Q. And it's from Colonel Henderson to</p> <p>6 BG Scott Spellmon. Does that mean Brigadier General?</p> <p>7 A. Yes.</p> <p>8 Q. At the time, that was his title, right?</p> <p>9 A. Right.</p> <p>10 Q. And at the time of this, what was the</p> <p>11 Brigadier General's position or responsibility at the</p> <p>12 Corps?</p> <p>13 A. Brigadier General Spellmon was the</p> <p>14 division commander for the Northwestern Division.</p> <p>15 Q. And what is the subject matter of this</p> <p>16 email chain?</p> <p>17 A. That would be the Omaha District SITREP.</p> <p>18 Q. What does SITREP mean?</p> <p>19 A. SITREP means situation report.</p> <p>20 Q. And he's giving a situation report of</p> <p>21 events in the Omaha District. Is that a fair way to</p> <p>22 characterize what this is?</p> <p>23 A. Yeah, that looks about right.</p> <p>24 Q. And is it your understanding this is the</p> <p>25 same day Mr. Stasch was reporting to Colonel Henderson</p>	<p style="text-align: right;">Page 96</p> <p>1 Sioux Tribe today in addition to the smaller protests</p> <p>2 that are ongoing at a DAPL work site near their</p> <p>3 reservation and at our Oahe office today."</p> <p>4 Q. Do you agree with that statement, there is</p> <p>5 significant protest activity brewing at Standing Rock</p> <p>6 Sioux Tribe?</p> <p>7 A. I don't know. I mean, I don't know. I'm</p> <p>8 not sure what he's talking about, exactly.</p> <p>9 Q. Okay. Do you agree with it?</p> <p>10 MS. BOBET: Objection, asked and answered.</p> <p>11 MR. SEBY: I didn't hear the answer.</p> <p>12 A. Yeah. I mean, I don't know what to think</p> <p>13 about that.</p> <p>14 Q. (BY MR. SEBY) And then the last sentence</p> <p>15 of that paragraph, "We'll generate a CCIR if one is</p> <p>16 triggered as this develops." What do you understand</p> <p>17 that to be referring to?</p> <p>18 A. So the way I read that, if any of the</p> <p>19 CCIR -- the critical information requirements -- are</p> <p>20 met, then we will generate the report to send to our</p> <p>21 Headquarters.</p> <p>22 Q. And his reference to "as this develops,"</p> <p>23 what is the "this" that's being referred to --</p> <p>24 MS. BOBET: Objection, foundation.</p> <p>25 Q. (BY MR. SEBY) -- do you believe?</p>
<p style="text-align: right;">Page 95</p> <p>1 and you and talking about the Exhibit 1 issues we just</p> <p>2 discussed?</p> <p>3 A. It looks like the same day; August 15th,</p> <p>4 yes.</p> <p>5 MR. SEBY: Could we scroll down, please;</p> <p>6 just a little bit up, please. That paragraph after the</p> <p>7 hash marks is where I'd like to discuss. There you go,</p> <p>8 right there, "In other news."</p> <p>9 A. (Deponent examined document.) Okay.</p> <p>10 Q. (BY MR. SEBY) So is it fair to say that</p> <p>11 Colonel Henderson is reporting to the division</p> <p>12 commander, his boss, about the situation in the</p> <p>13 district on August 8th? And he is supplementing that</p> <p>14 with a report on August 15th, right?</p> <p>15 MS. BOBET: Objection; compound,</p> <p>16 foundation, and lack of personal knowledge.</p> <p>17 Q. (BY MR. SEBY) I'm asking, is that your</p> <p>18 understanding?</p> <p>19 A. Which -- which -- what happened on</p> <p>20 August 8th?</p> <p>21 MR. SEBY: Withdraw the question.</p> <p>22 Q. (BY MR. SEBY) Would you read the first</p> <p>23 sentence of the paragraph that's on the screen.</p> <p>24 A. Yeah. "In other news, there appears to be</p> <p>25 significant protest activity brewing at Standing Rock</p>	<p style="text-align: right;">Page 97</p> <p>1 A. I interpret that to mean the protest</p> <p>2 activity with regard to DAPL.</p> <p>3 Q. Do you think that that reference includes</p> <p>4 the protest encampments that are on Corps property at</p> <p>5 this time?</p> <p>6 A. I would read that to mean, yeah, any</p> <p>7 protests regarding the DAPL work.</p> <p>8 MR. SEBY: All right. I'd like to go,</p> <p>9 please, to what's marked Exhibit 3.</p> <p>10 (Deposition Exhibit 3, remotely introduced</p> <p>11 and provided electronically to the court reporter.)</p> <p>12 Q. (BY MR. SEBY) This is a chain of three</p> <p>13 emails. If you could go to the bottom of the chain,</p> <p>14 the beginning correspondence in the chain, please.</p> <p>15 This is an email from Eric Stasch to Eileen Williamson</p> <p>16 and Colonel Henderson and other Corps individuals,</p> <p>17 including Mr. Fink, who you've identified, and</p> <p>18 Mr. Roby, who you've identified; is that correct?</p> <p>19 A. Yeah, that looks correct.</p> <p>20 Q. Would you read that email and let me know</p> <p>21 if you are familiar with what is being referred to</p> <p>22 there?</p> <p>23 A. (Deponent examined document.) Yeah. I</p> <p>24 don't recall what that video was about.</p> <p>25 Q. Okay. And then the second sentence, "The</p>

97:15-
19;
99:4-7;
100:10-
12
401-402;
403; 602

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<p style="text-align: right;">Page 98</p> <p>1 law enforcement people on site are dealing with a</p> <p>2 dynamic situation." What is your understanding of who</p> <p>3 the law enforcement people on site is referring to?</p> <p>4 A. To me, that means the local law</p> <p>5 enforcement.</p> <p>6 Q. Okay. And what do you think Mr. Stasch</p> <p>7 meant by referring to it as a "dynamic situation"?</p> <p>8 MS. BOBET: Objection; foundation, lack of</p> <p>9 personal information.</p> <p>10 MR. SEBY: I'm asking for what he thinks</p> <p>11 that means.</p> <p>12 MS. BOBET: The objection stands. You can</p> <p>13 answer.</p> <p>14 A. Yeah. I mean, the way I read this, that</p> <p>15 was referring to the fact that there were daily changes</p> <p>16 to the situation.</p> <p>17 Q. (BY MR. SEBY) Is this dated August 16th,</p> <p>18 a day after the exhibits we just discussed?</p> <p>19 A. Yes.</p> <p>20 Q. How many days prior to this do you think</p> <p>21 there were where there were changing situations?</p> <p>22 A. I don't know.</p> <p>23 Q. If you could go up one email, please. It</p> <p>24 starts on the page above. This email is from Colonel</p> <p>25 Henderson on Wednesday, August 17, 2016, to Mr. Stasch,</p>	<p style="text-align: right;">Page 100</p> <p>1 individuals who are a member of that board, you could</p> <p>2 just do it as a group reference by adding that</p> <p>3 recipient?</p> <p>4 A. Yeah. That was the distribution list for</p> <p>5 the members of the corporate board.</p> <p>6 Q. So you did receive this email that way?</p> <p>7 A. I can't verify with a hundred percent, but</p> <p>8 it's likely that I did, because I believe I was on that</p> <p>9 distribution list.</p> <p>10 Q. Do you have any reason to believe you</p> <p>11 didn't receive this email?</p> <p>12 A. No.</p> <p>13 Q. Okay. If we could go up above this email</p> <p>14 for a moment. This is you replying to that group,</p> <p>15 isn't it?</p> <p>16 A. Yes.</p> <p>17 Q. So you did receive it, and you "Replied</p> <p>18 All," right?</p> <p>19 A. That looks right.</p> <p>20 MR. SEBY: Okay. If we could go back to</p> <p>21 Colonel Henderson's email below, please.</p> <p>22 Q. (BY MR. SEBY) And I'll give you a moment,</p> <p>23 sir, to read that, please.</p> <p>24 A. (Deponent examined document.) Okay.</p> <p>25 Q. Colonel Henderson is referencing, in the</p>
<p style="text-align: right;">Page 99</p> <p>1 replying to his email below. You're also not copied on</p> <p>2 this; is that correct?</p> <p>3 A. That's correct.</p> <p>4 Q. Were you blind copied on this email?</p> <p>5 A. No, but I was a member of the corporate</p> <p>6 board, so my email address was probably included in</p> <p>7 that distribution.</p> <p>8 Q. I'm sorry. I don't understand what that</p> <p>9 means. Would you explain what that reference is?</p> <p>10 A. The corporate board was the senior</p> <p>11 advisory board for the district commander.</p> <p>12 Q. Are you the only member of that advisory</p> <p>13 board?</p> <p>14 A. No.</p> <p>15 Q. Who else was on that board with you at</p> <p>16 this time?</p> <p>17 A. It included the division chiefs, and</p> <p>18 office of counsel, and possibly one or two others.</p> <p>19 Q. Which others?</p> <p>20 A. The senior civilian leader in the district</p> <p>21 was on the corporate board as well.</p> <p>22 Q. Who is that individual?</p> <p>23 A. His name is Ted Streckfuss,</p> <p>24 S-t-r-e-c-k-f-u-s-s.</p> <p>25 Q. Okay. So there was no need to reference</p>	<p style="text-align: right;">Page 101</p> <p>1 first sentence after saying "Team," "Based on our</p> <p>2 earlier TELECON . . ." What does "TELECON" mean?</p> <p>3 A. Teleconference.</p> <p>4 Q. Okay. ". . . teleconference [sic] today</p> <p>5 with the US Attorney in North Dakota . . ." Were you</p> <p>6 part of that teleconference, Lieutenant Startzell?</p> <p>7 A. I don't remember.</p> <p>8 Q. Do you recall being told about the</p> <p>9 teleconference?</p> <p>10 A. I don't remember. I mean, it looks like I</p> <p>11 was aware of it, because I was on the email at least.</p> <p>12 Q. Well, Colonel Henderson says "our earlier</p> <p>13 teleconference." So "our" to the team, I'm wondering</p> <p>14 if that included you. That's the question.</p> <p>15 A. Yeah. It's possible, but it's also</p> <p>16 possible that it just included a subset of the people</p> <p>17 on the email.</p> <p>18 Q. Okay. So the balance of that one-sentence</p> <p>19 paragraph, if you'd please read that.</p> <p>20 A. (Deponent examined document.) Okay.</p> <p>21 Q. Colonel Henderson, again, refers to the</p> <p>22 demonstrations as the SRST demonstrations, right?</p> <p>23 A. Yes.</p> <p>24 Q. Why does he do that?</p> <p>25 MS. BOBET: Objection; personal knowledge,</p>

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1 calls for speculation.

2 Q. (BY MR. SEBY) If you know, Lieutenant

3 Colonel.

4 A. I don't know why he picked that

5 terminology.

6 Q. And then he goes on to say there's a

7 potential "to trigger a few NWD CCIRs over the next

8 several days . . . specifically CCIRs c, k, or s,"

9 right?

10 A. Yes.

11 Q. Earlier, I asked you if you knew what

12 those sections were, right?

13 A. Yes.

14 Q. And you said that you did not recall?

15 A. Correct.

16 Q. Okay. Coming down to the paragraph that

17 begins, "A few items of guidance here," from Colonel

18 Henderson. Have you read that paragraph numbered 1?

19 A. Yes.

20 Q. Who is Colonel Henderson, to your

21 knowledge, referring to as the PAO?

22 A. That would be our Public Affairs Officer

23 (sic).

24 Q. And who is that?

25 A. At this time, it was either Tom O'Hara or

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1 Eileen Williamson.

2 Q. Well, in fact, Ms. Williamson is copied on

3 this email, isn't she; or an addressee, more

4 specifically, right there (indicating)?

5 A. Okay.

6 Q. Is that the reference to the PAO?

7 A. I don't know if he was referring to her or

8 her boss, Tom O'Hara.

9 Q. Okay.

10 A. But the office, in general, I think is who

11 he was referring to.

12 Q. Oh, he's referring to the Public Affairs

13 Office?

14 A. Yes.

15 Q. All right. What does he mean, keep them

16 in the loop on any decisions on special use permits?

17 MS. BOBET: Objection; calls for

18 speculation, personal knowledge.

19 Q. (BY MR. SEBY) To your knowledge, sir.

20 A. I think he just wanted to be sure that

21 they were aware of what the situation was with any

22 special use permits that were requested or granted.

23 Q. Have you read the balance of that

24 paragraph numbered 1, two sentences?

25 A. Yes.

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1 Q. Right after the "kept in the loop on any

2 decisions on special use permits," it says "vice." Is

3 it possible that means -- that's a typo; meaning, vs or

4 versus?

5 A. I don't know.

6 Q. How would you explain that word, then, in

7 the sentence?

8 A. I mean, vice generally means against or,

9 you know, as opposed to.

10 Q. Okay. So if we were to go with that

11 interpretation, "as opposed to what may be trespassing

12 on government lands for these events," what is your

13 knowledge or understanding of what he's referring to?

14 A. He seems to be talking about any

15 activities that were permitted versus not permitted.

16 Q. So would it be accurate to say -- would it

17 be accurate to understand what you've said as referring

18 to the protesters that are presently, at this time, on

19 U.S. Government property?

20 MS. BOBET: Objection, vague.

21 Q. (BY MR. SEBY) Do you understand the

22 question, Lieutenant Colonel?

23 A. No. Can you say it again?

24 Q. Who is he referring to?

25 MS. BOBET: Objection, calls for

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1 speculation.

2 Q. (BY MR. SEBY) If you know, sir.

3 A. I mean, I think he's referring to the

4 people that are setting up camps. But more

5 specifically, I don't know beyond that.

6 Q. Okay. All right. If we could go up to

7 your email, which is the top of this chain, please.

8 It's from Thomas -- from James T. Startzell, replying

9 to Colonel Henderson's email and the group copied on it

10 below, correct, Wednesday, August 17?

11 A. Yes.

12 Q. Would you please read your email below.

13 A. "All, Just to clarify the NWD CCIRs that

14 are of particular interest here are." Okay.

15 Q. And after that sentence that you just read

16 from your email, there are three lines below that. The

17 first one starts with the letter "c." What is that

18 referring to?

19 A. I believe that refers to CCIR, some number

20 (sic), "c."

21 Q. All right. And the next one?

22 A. CCIR, something, "k," yeah.

23 Q. Okay. And the last one?

24 A. CCIR, something "s."

25 Q. Okay. So earlier, you did not recall

105:6-
106:6
401-
402;
403; 802

Lieutenant Colonel James T. Startzell

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1 these specific provisions that I asked you about; is
2 that correct?

3 A. Yes.

4 Q. Is your recollection refreshed now from
5 your own email?

6 A. Yes.

7 MR. SEBY: All right. If we could go,
8 please, to what's marked Exhibit 4.

9 (Deposition Exhibit 4, remotely introduced
10 and provided electronically to the court reporter.)

11 MR. SEBY: If you could please enlarge
12 that so the Lieutenant Colonel can see Exhibit 4 text,
13 which consists of two emails. If we could go the
14 bottom, please, of Exhibit 4. Exhibit 4. I'm sorry.
15 we're on Exhibit 3. If you could transition to
16 Exhibit 4, please. Is Exhibit 4 possible, please?
17 There we go. Enlarge that, please, for the Lieutenant
18 Colonel to read, the first email at the bottom of the
19 screen.

20 Q. (BY MR. SEBY) If you would, sir, read the
21 beginning of that email; which is an email from Colonel
22 Henderson, dated August 18, 2016, to Brigadier General
23 Spellmon, copied to a number of Corps individuals,
24 which included you, Lieutenant Colonel Startzell,
25 correct?

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1 A. Yes.

2 Q. And there, the email begins with a
3 reference to "Sir." So is he reporting to his --
4 Colonel Henderson reporting to his superior?

5 A. Yes.

6 Q. And he's copying you as the deputy
7 district commander so you're aware of it as well,
8 correct?

9 A. Yes.

10 Q. All right. And others, of course.
11 There's that acronym you told me about means bottom
12 line -- refresh my recollection, please, what that BLUF
13 means.

14 A. Bottom line up front.

15 Q. Bottom line up front. Okay.

16 A. (Deponent examined document.)

17 Q. Again, Colonel Henderson refers to these
18 as the SRST protests. Why does he do that again, to
19 your knowledge?

20 MS. BOBET: Object --

21 THE REPORTER: Ms. Bobet, did you object?

22 MS. BOBET: No, I'm sorry. He finished
23 the question, so no objection.

24 A. Yeah. My guess is that because Chairman
25 Archambault was involved in calling for protests.

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1 Q. (BY MR. SEBY) What basis do you say that
2 on?

3 A. Just recollection.

4 Q. And do you know what Colonel Henderson is
5 referring to, "growing larger, and more hostile"?

6 A. No, not specifically.

7 Q. Are you aware there was a protest on the
8 Standing Rock Sioux Tribe reservation? Was there?

9 A. I don't recall specifics.

10 Q. You're aware, sir, that there was a
11 protest going on on the Corps land, though, right?

12 A. Yes.

13 Q. Okay. Is it possible that's what Colonel
14 Henderson meant?

15 MS. BOBET: Objection, calls for
16 speculation.

17 Q. (BY MR. SEBY) I'm just asking if you
18 believe that or not?

19 A. It's possible, yeah, but I don't know
20 specifically.

21 Q. All right. If we could come down, please,
22 to the next paragraph, which is captioned
23 "DETAILS." Read that paragraph, please.

24 A. (Deponent examined document.) Okay.

25 Q. Colonel Henderson is talking about

Page 109

1 ". . . a large encampment of protesters (over 1500
2 people by recent estimates) near the mouth of the
3 Cannonball River which has spilled over to Corps land
4 in this area. They are technically trespassing on
5 Government Property since they do not have a Special
6 Use Permit." Is that what it says?

7 A. Yeah, that's what I read.

8 Q. What does he mean, then, in the next
9 sentence?

10 MS. BOBET: Objection; calls for
11 speculation, lack of personal knowledge.

12 Q. (BY MR. SEBY) Colonel (sic) Startzell,
13 were you part of the telephone conference with the
14 U.S. Attorney's Office the day prior to this email?

15 A. I don't remember, specifically.

16 Q. Do you recall being made aware of the
17 situation in the camps that is being reported here by
18 Colonel Henderson and copied to you?

19 A. Yeah. At some point I became aware of
20 this, yes.

21 Q. When?

22 A. I don't remember.

23 Q. How did you become aware, Lieutenant
24 Colonel Startzell?

25 A. Again, I don't remember.

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1 Q. Did it take you much after this date to
2 become aware -- or when you became aware?

3 A. Well, if I was not aware before this date,
4 then I was after reading this email.

5 Q. And when did you read this email?

6 A. I don't remember, but it's highly likely
7 it was the day of.

8 Q. Thank you. The next paragraph is entitled
9 "WAY AHEAD." Do you see that?

10 A. I do.

11 Q. What does "WAY AHEAD" mean, do you
12 believe?

13 A. "WAY AHEAD" means how we plan on
14 proceeding with the situation.

15 Q. And then the next sentence, if you'd read
16 that, please.

17 A. (Deponent examined document.)

18 Q. Would you read it aloud, sir.

19 A. "We are taking a posture to just monitor
20 and report. Law enforcement appears to be taking more
21 of a containment posture (as opposed to intervening).
22 We have advised our team to minimize (mission essential
23 only) or eliminate our presence in this area, and I
24 have retained the decision authority on any special use
25 permits based on our call yesterday (we do not want to

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1 give any appearance to condoning/facilitating violent
2 activity). Therefore, law enforcement considers this
3 an 'unlawful protest.' We will coordinate CCIRs with
4 Torrey as needed."

5 Q. This is Lieutenant Colonel -- this is
6 Colonel Henderson reporting to his superior, correct?

7 A. Yes.

8 Q. And the "we" that Colonel Henderson is
9 referring to here, do you understand that to be "we" in
10 the district?

11 A. I understand that to be among the
12 district, yes.

13 Q. And at this time, sir, you are the second
14 in command of that district, correct?

15 A. Correct.

16 Q. Thank you. And the last sentence of the
17 paragraph, please.

18 A. (Deponent examined document.)

19 Q. Would you read it aloud, "My
20 assessment . . ."

21 A. "My assessment is that this will get worse
22 before it gets better; believe DAPL and law enforcement
23 are taking the right approach right now . . . just to
24 stay out of their way. I anticipate that this will
25 continue to be a problem for the next week or two

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1 (until after the PI hearing). We will likely have a
2 mess to clean up after they depart the area."

3 Q. I know Colonel Henderson doesn't have a
4 crystal ball, but what do you think, looking back at
5 that statement, "We will likely have a mess to clean up
6 after they depart the area"? Did the protest last for
7 just a few days?

8 MS. BOBET: Objection, compound.

9 A. No, it did not.

10 Q. (BY MR. SEBY) How long did it last,
11 Lieutenant Colonel Startzell, approximately?

12 A. Several months, through approximately
13 February.

14 Q. So how many months do you estimate that is
15 from this time till the time you just mentioned?

16 A. About six months.

17 Q. Thank you, sir.

18 MR. SEBY: If we could go to Exhibit 5,
19 please, what's marked Exhibit 5.

20 (Deposition Exhibit 5, remotely introduced
21 and provided electronically to the court reporter.)

22 MR. SEBY: And if we could -- this is an
23 email string, also. Could you please go to the
24 beginning email before the attachment. Up, please, up.
25 Right there.

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1 Q. (BY MR. SEBY) The first email in this
2 string is from a gentleman named Jeffrey Wells, Project
3 Manager, Police Intelligence Cell, Retired Special
4 Agent, Army Threat Integration, known as ARTIC,
5 Washington, D.C., at the Pentagon. Is that correct,
6 Lieutenant (sic) Startzell?

7 A. Yes, that appears to be correct.

8 Q. Okay. Let's look at Mr. Wells' email,
9 which is August 18, 2016, addressed to Richard Roberts,
10 copied to Matthew Crosby. Do you know who those
11 gentlemen are, your colleagues in the Corps and the
12 Army?

13 A. I don't know who they are.

14 Q. Are you familiar with ARTIC?

15 A. Not really.

16 Q. Do you know who they are?

17 A. I mean, I think they're one of the
18 intelligence organizations at higher Headquarters in
19 the Army.

20 Q. And, in fact, Mr. Wells' signature block
21 says that, doesn't it?

22 A. Uh-huh, yes.

23 Q. And so above this email is an email from
24 Richard Roberts responding to his colleague, Mr. Roby,
25 Roger Roby. Actually, he's not responding. He's

112:3-7
602;
611
com-
pound111:19-112:2
403; 602; 802

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1 forwarding this email. If you could go up there and
 2 let me know if you agree with that.
 3 A. Yeah, that looks right. He's forwarding
 4 it.
 5 Q. So at the end of this email, before we
 6 talk about it, it appears from this email that
 7 Mr. Roberts -- can you tell me what his signature block
 8 says his role and title is?
 9 A. Richard L. Roberts, Command Criminal
 10 Intelligence Officer, Headquarters, U.S. Army Corps of
 11 Engineers Office of the Provost Marshal, Operational
 12 Protection Division.
 13 Q. Operational Protection Division, what is
 14 your understanding of that division within the United
 15 States Army?
 16 A. Well, it looks like a sub branch within
 17 the Corps of Engineers Headquarters.
 18 Q. I understand. What is your responsibility
 19 for the function of that division?
 20 A. Force protection, which is protection of
 21 personnel.
 22 Q. And property?
 23 A. Yeah, that would be fair.
 24 Q. Why is he writing to Richard Roby?
 25 A. I mean, he was probably concerned about

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1 something that he read in the intel report.
 2 Q. Could you take a moment and read his
 3 communication, in his words, to Roger Roby, who I
 4 understand, from what you said earlier, is the manager
 5 of security within your district in Omaha at the time;
 6 is that correct?
 7 A. Yes.
 8 Q. All right. Have a look, please, and read
 9 the text of that email to that gentleman.
 10 A. Do you want me to read this aloud, or can
 11 I read it to myself?
 12 Q. If you would read it to yourself, please,
 13 and then let's discuss it.
 14 A. (Deponent examined document.) Okay. I
 15 read that page.
 16 Q. All right. Do you disagree with anything
 17 in that report?
 18 A. I don't really have any grounds to
 19 disagree with it. I mean, this is an intel report from
 20 someone gathering the intel.
 21 Q. Yeah. Did you read this email at the time
 22 you received it? Because you were copied on the latest
 23 email and the chain, which we'll get to in a moment.
 24 A. I think it's highly likely I did, yeah.
 25 Q. All right. So the email above the one

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1 that we're looking at is from Mr. Roby to -- back to
 2 Richard Roberts, and you are now copied on this email;
 3 is that correct?
 4 A. Yes.
 5 Q. Again, this is Thursday, August 18th,
 6 2016. And Mr. Roby replies to Mr. Richard Roberts, who
 7 is the Command Criminal Intelligence Officer in the
 8 Operational Protection Division of the United States
 9 Army Corps of Engineers, and says that the BIA was
 10 calling, asking if the Corps, your district, had issued
 11 a permit or a campsite on Corps property; is that
 12 correct?
 13 A. Yes, it looks like that's what's in there.
 14 Q. He goes on to say, "We have not issued a
 15 permit although we are aware that one is being
 16 prepared."
 17 A. Okay.
 18 Q. And that -- what does he say in the next
 19 paragraph?
 20 A. "According to this BIA officer there is no
 21 Law Enforcement agency that is willing to go near the
 22 protest/camp sites [sic]. They have closed off the
 23 local HWY leading into the area and are rerouting
 24 traffic. All USACE employees have been instructed to
 25 stay away from the area."

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1 Q. Dangerous situation going on here, isn't
 2 there?
 3 A. I mean, we were definitely concerned with
 4 public safety there.
 5 Q. Because?
 6 A. Because of all the events that had
 7 happened.
 8 Q. Including the protesters on Corps land?
 9 A. Yes.
 10 Q. Including the fact that you've not issued
 11 a permit at this time?
 12 A. Well, I don't think we were concerned
 13 about safety from that perspective, but we were
 14 concerned about the safety, in general.
 15 Q. I didn't ask about safety. I asked
 16 whether you agreed that no permit had been issued at
 17 this time?
 18 MS. BOBET: Objection, mischaracterizes
 19 the testimony.
 20 MR. SEBY: Well, I'm objecting to the
 21 mischaracterization of my question.
 22 Q. (BY MR. SEBY) Answer the question,
 23 please, sir.
 24 A. Yeah. Can you ask the question again? I
 25 just want to make sure I'm answering the right one.

Lieutenant Colonel James T. Startzell

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<p style="text-align: right;">Page 118</p> <p>1 Q. Do you agree, Lieutenant Colonel</p> <p>2 Startzell, that the chief of security in your district</p> <p>3 has observed that you've not issued a permit?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. So the next and last email in this</p> <p>6 chain, which is the most recent one, if we could go up</p> <p>7 there. And, sir, if you'd read that email. The email</p> <p>8 is from Aaron Hoffman to Mr. Roby and yourself,</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. Mr. Hoffman, do you recognize him?</p> <p>12 A. I do.</p> <p>13 Q. His title is in the signature block below,</p> <p>14 isn't it, sir?</p> <p>15 A. Are you asking me what his title is?</p> <p>16 Q. Yeah. From his signature block below, he</p> <p>17 is the Chief, Security and Law Enforcement for the</p> <p>18 Northwestern Division. Is that what it says?</p> <p>19 A. Yes, that's correct.</p> <p>20 Q. Which includes your district?</p> <p>21 A. Yes.</p> <p>22 Q. Why isn't Colonel Henderson copied on this</p> <p>23 email?</p> <p>24 MS. BOBET: Objection, calls for</p> <p>25 speculation.</p>	<p style="text-align: right;">Page 120</p> <p>1 into ENLink.</p> <p>2 Q. A lot of incidents relating to DAPL</p> <p>3 protests?</p> <p>4 A. Yes.</p> <p>5 Q. When did you start doing that?</p> <p>6 A. I don't remember.</p> <p>7 Q. Would this have been the first possible</p> <p>8 time you did it, or did you do it prior to this?</p> <p>9 A. I don't remember.</p> <p>10 Q. Would you know if any of these other</p> <p>11 individuals, the emergency manager or the security</p> <p>12 chief, would have done that?</p> <p>13 A. Usually, we would tell each other when we</p> <p>14 entered incidents in. So at the time, I probably would</p> <p>15 have known.</p> <p>16 Q. Do you recall any of these other two</p> <p>17 individuals telling you that they had done so?</p> <p>18 A. I don't.</p> <p>19 Q. Is there a record of entries made in</p> <p>20 ENLink?</p> <p>21 A. Through ENLink, you can pull a record,</p> <p>22 yes; should be able to.</p> <p>23 Q. Is that information stored somewhere?</p> <p>24 A. Yes, but I can't remember who manages</p> <p>25 ENLink. Someone has access to that, yes.</p>
<p style="text-align: right;">Page 119</p> <p>1 Q. (BY MR. SEBY) I'm asking if you know,</p> <p>2 sir?</p> <p>3 A. I don't know.</p> <p>4 Q. If you'd come down to the third full</p> <p>5 paragraph, "Let me know if you need my help with</p> <p>6 anything." Let me know when you've read that to</p> <p>7 yourself.</p> <p>8 A. (Deponent examined document.) Okay.</p> <p>9 Q. What does the acronym EM stand for?</p> <p>10 A. Emergency management.</p> <p>11 Q. What how about the couple words later,</p> <p>12 ENLink? What does that refer to?</p> <p>13 A. ENLink is the software application where</p> <p>14 you can report incidents that are occurring.</p> <p>15 Q. What kind of incidents are meant to be</p> <p>16 reported in this system?</p> <p>17 A. All kinds of things; from natural</p> <p>18 disasters, to terror threats, to sighting of a drone.</p> <p>19 Q. And who has access to make such reports?</p> <p>20 A. Typically, it was the emergency manager,</p> <p>21 or the security chief, or myself.</p> <p>22 Q. In this instance, did you report this to</p> <p>23 ENLink?</p> <p>24 A. I don't know about this specific email,</p> <p>25 what this is referring to, but I put a lot of incidents</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. What does ENLink stand for, please?</p> <p>2 A. I think it just stands for engineer link.</p> <p>3 Q. And when one makes a report on ENLink,</p> <p>4 where does that report go? Does someone monitor that,</p> <p>5 or what's the -- what's the purpose of that? Who is</p> <p>6 alerted by such reports?</p> <p>7 A. At the higher Headquarters, the division</p> <p>8 and the Headquarters USACE emergency management or</p> <p>9 security offices would have visibility of that and</p> <p>10 would be alerted.</p> <p>11 Q. Okay. So again, this email is from the</p> <p>12 Chief, Security and Law Enforcement for the</p> <p>13 Northwestern Division, which is the office within the</p> <p>14 Corps management structure above. Your level is the</p> <p>15 deputy division commander, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And he's asking you -- because you're the</p> <p>18 "sir" being referenced as the addressee, correct?</p> <p>19 A. Yes.</p> <p>20 Q. He's asking you, ". . . has your EM shop</p> <p>21 put this one in ENLink," right?</p> <p>22 A. Yeah, it looks like that's what he's</p> <p>23 asking in that part.</p> <p>24 Q. Did you respond to this email?</p> <p>25 A. I don't remember.</p>

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<p style="text-align: right;">Page 122</p> <p>1 Q. Do you agree that's a pretty big deal --</p> <p>2 question from a superior of yours, asking about an</p> <p>3 action taken or not?</p> <p>4 A. No.</p> <p>5 Q. You don't think it's a big deal?</p> <p>6 A. Well, I wouldn't call him a superior of</p> <p>7 mine.</p> <p>8 Q. Is he a civilian?</p> <p>9 A. He is, but he's a staff officer conducting</p> <p>10 staff coordination. That's why I say that.</p> <p>11 Q. But he works within an office that is</p> <p>12 superior to your office in the district command,</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. Did you feel it was appropriate or not to</p> <p>16 respond to him?</p> <p>17 A. I think, normally, responding is</p> <p>18 appropriate, yeah, for situations like these.</p> <p>19 Q. And do you recall providing any response?</p> <p>20 A. I don't recall.</p> <p>21 Q. Did you ever pick up the phone and discuss</p> <p>22 these events with him at the time?</p> <p>23 A. Yes.</p> <p>24 Q. In response to this email?</p> <p>25 A. I talked to Mr. Hoffman quite often, so --</p>	<p style="text-align: right;">Page 124</p> <p>1 and provided electronically to the court reporter.)</p> <p>2 Q. (BY MR. SEBY) And the United States</p> <p>3 produced a document that's at the end of this string of</p> <p>4 emails. I'm not going to ask you about -- your counsel</p> <p>5 has stricken from view or redacted a large amount of</p> <p>6 the content of the email, but attached to the email is</p> <p>7 a document I want to ask you about.</p> <p>8 MR. SEBY: If you could blow that up,</p> <p>9 please, enlarge it for the Lieutenant Colonel to see.</p> <p>10 Q. (BY MR. SEBY) If you would describe what</p> <p>11 you're seeing, sir.</p> <p>12 A. This looks like a letter from the Standing</p> <p>13 Rock Sioux Tribe to Mr. Stasch, our project manager.</p> <p>14 Q. And what does the "RE" line say?</p> <p>15 A. Attachment J.</p> <p>16 Q. Okay. This email, at the very beginning,</p> <p>17 references this attachment by the name "SRST Special</p> <p>18 Use Permit Application, DAPL protest camps." So do you</p> <p>19 have any reason to believe that that attachment is</p> <p>20 different than what the "RE" line of the email labels</p> <p>21 it?</p> <p>22 A. No.</p> <p>23 Q. Okay. And who is the signator on this</p> <p>24 letter, sir?</p> <p>25 A. Chairman Archambault.</p>
<p style="text-align: right;">Page 123</p> <p>1 I don't remember if any of them were specifically</p> <p>2 related to this email.</p> <p>3 Q. Had you spoken with him at the time of</p> <p>4 this email on anything else, or had you yet to talk</p> <p>5 with him?</p> <p>6 A. I don't remember.</p> <p>7 Q. You don't recall ever -- when you first</p> <p>8 communicated with this gentleman? He knew you and</p> <p>9 referred to you as "Sir."</p> <p>10 A. Oh, yeah. I spoke with Mr. Hoffman quite</p> <p>11 often, so -- I just don't remember specific timing for</p> <p>12 those conversations.</p> <p>13 Q. Would you have ever talked to him previous</p> <p>14 to this date?</p> <p>15 A. It's likely.</p> <p>16 Q. Did you speak with him often about the</p> <p>17 DAPL protests?</p> <p>18 A. Yes.</p> <p>19 Q. Particularly the protest encampments</p> <p>20 located on Corps land?</p> <p>21 A. Yeah, I think we talked about a lot of</p> <p>22 things related to DAPL.</p> <p>23 MR. SEBY: Okay. If we could go, please,</p> <p>24 to Exhibit 9 for a moment.</p> <p>25 (Deposition Exhibit 9, remotely introduced</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. Who is?</p> <p>2 A. The Chairman of the Standing Rock Sioux</p> <p>3 Tribe.</p> <p>4 Q. And if we could turn to the next page of</p> <p>5 the -- or the page of the attachment, please, just</p> <p>6 continue down. Do you recognize the block with the "US</p> <p>7 Army Corps of Engineers" and the symbol of the Corps</p> <p>8 there?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And what is the name of the</p> <p>11 document, if you would?</p> <p>12 A. Special Event Application.</p> <p>13 Q. How about the block above?</p> <p>14 A. Special Event Application Form, Permit and</p> <p>15 Assessment of Fees.</p> <p>16 Q. All right. And the -- there's some</p> <p>17 smaller language below that, "Project Operations." And</p> <p>18 then it says, "USACE Guide for Implementation of</p> <p>19 EC 1130-2-550, Chapter 9." Lieutenant Colonel</p> <p>20 Startzell, are you aware of what that refers to?</p> <p>21 A. No.</p> <p>22 Q. Have you ever read those documents?</p> <p>23 A. I don't know.</p> <p>24 Q. I thought you said you had a training</p> <p>25 session prior to becoming district commander on this</p>

No
objection
to
admitt-
ing the
version
of this
exhibit
at
USACE
_000521
32

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1 special use permit process.

2 MS. BOBET: Objection, mischaracterizes

3 evidence. You can answer.

4 A. I did.

5 Q. (BY MR. SEBY) As part of your training,

6 did you read this document?

7 A. I don't remember, but there's a lot of

8 documents out there.

9 Q. Do you have any personal recollection of

10 this document and its contents?

11 A. No.

12 Q. Do you think you ever did?

13 A. I don't recall.

14 MR. SEBY: All right. If we could go down

15 a little bit on the document. And perhaps -- I'm

16 sorry. I want to go from the beginning of the

17 applicant that's listed there at the top, just below

18 the block there. Stop, and maybe blow that up a little

19 bit so we can talk about what it says.

20 Q. (BY MR. SEBY) If you'd look at that,

21 Lieutenant Colonel Startzell, and just read that for a

22 moment, over the -- before the numbered paragraphs

23 below the introductory paragraph there.

24 A. (Deponent examined document.) Okay.

25 Q. All right. So is it fair to say the

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1 applicant is Dave Archambault, the Chairman of the

2 Standing Rock Sioux Tribe, and that the entity for

3 which the application is submitted is the Standing Rock

4 Sioux Tribe?

5 A. Yes.

6 Q. And the event description is a, "Spiritual

7 encampment to protest the Dakota Access Pipeline."

8 A. Okay.

9 Q. And the application is -- describes the

10 event date as, "August 15 until the pipeline

11 construction ceases or operations cease." Is that what

12 it says?

13 A. Yes.

14 Q. Going back to the letter transmitting this

15 application, it's dated August 18th. Why was -- why

16 was this being a request backdated for a permit?

17 MS. BOBET: Objection, calls for

18 speculation.

19 Q. (BY MR. SEBY) If you know.

20 A. I mean, I think they had already occupied

21 the site before submitting a permit.

22 Q. Who is "they"?

23 A. Protesters.

24 Q. Which would include non-Standing Rock

25 Sioux Tribe individuals?

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1 A. Probably.

2 Q. All right. If we could go back to that

3 paragraph at the beginning of the application. The

4 location that's being sought for permission to have the

5 protest activity is 20 acres immediately north of the

6 Cannonball River. Is that what it says?

7 A. Yes.

8 Q. Is that Army Corps of Engineers property?

9 A. I don't know.

10 Q. Does it stand to reason that the answer is

11 yes, given that he's asking for Corps permission to be

12 there?

13 A. Possibly, yeah. I don't know without

14 seeing a (inaudible) statement.

15 Q. We're going to get to that in a moment.

16 So he also requests permission for a protest that's

17 already there for 300 people, correct? That's what it

18 says?

19 MS. BOBET: Objection, mischaracterizes

20 the evidence.

21 Q. (BY MR. SEBY) The number of participants

22 line is filled out by Chairman Archambault as

23 approximately, "App 300," right?

24 A. Yes.

25 Q. The number of vehicles, just below that,

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1 75?

2 A. Yes.

3 Q. At this time, sir, did you have any idea

4 whether those numbers had already been grossly exceeded

5 by people at the camps on Corps land?

6 A. I don't remember.

7 Q. Did you ever evaluate whether that was

8 true or not with respect to this application?

9 A. Probably did, yes.

10 Q. And you don't recall what you concluded?

11 A. No; I mean, not right now.

12 Q. All right. Not right now as we're talking

13 at the moment?

14 A. Right.

15 Q. All right. What was your role with

16 respect to the submission of this application? Did

17 you -- were you unaffiliated with how to handle it, or

18 were you involved with the internal processing of this

19 document forward?

20 A. From my recollection, I had it for

21 visibility, but I wasn't personally involved in the

22 processing of it.

23 Q. Throughout any period of time, or are you

24 limiting that to any initial period of time?

25 A. I mean, in general, I don't think I had

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1 direct hands-on processing this, but I did have
 2 visibility of it.
 3 Q. What does "visibility" mean?
 4 A. Meaning, I probably saw it and read it.
 5 Q. Read what?
 6 A. The document.
 7 Q. Are you referring to the exhibit we're
 8 talking about now?
 9 A. Yes.
 10 Q. How about future Corps correspondence and
 11 processing-related documents and communications?
 12 MS. BOBET: Objection, vague.
 13 Q. (BY MR. SEBY) Sir?
 14 A. Yeah. I mean, I can't remember everything
 15 processed after this.
 16 Q. Do you recall anything specifically where
 17 you were firsthand involved in next steps with respect
 18 to this permit application?
 19 A. No.
 20 Q. Nothing at all?
 21 A. No.
 22 Q. I'm sorry. Is that your answer?
 23 A. Yeah. I do not recall.
 24 Q. All right. We've passed another hour, but
 25 before we take a break for another ten minutes, do you

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1 recall who processed this upon receipt? It was
 2 addressed to Mr. Stasch, correct?
 3 A. Yes.
 4 Q. And who processed it, sir? Mr. Stasch?
 5 A. I mean, I believe the way those were
 6 normally processed is they went from the project
 7 manager, to the division chief, to the district
 8 commander.
 9 Q. Okay. And with respect to that process
 10 over this application, how did it turn out?
 11 A. So, I think the special use permit was
 12 never finalized.
 13 Q. What do you mean by "finalized"?
 14 A. So, it was never fully granted.
 15 Q. Fully granted or granted at all?
 16 A. Fully granted.
 17 Q. Never fully granted. Not granted at all?
 18 A. It was never granted.
 19 Q. Thank you.
 20 MR. SEBY: Ms. Bobet, I'd like to take a
 21 ten-minute break, please.
 22 MS. BOBET: Sounds good. Thank you,
 23 Mr. Seby.
 24 MR. SEBY: Thank you. Thank you,
 25 Lieutenant Colonel Startzell. We'll be back in ten

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1 minutes.
 2 (Recess, 1:09 p.m. to 1:21 p.m. MST.)
 3 MR. SEBY: We're back after a break,
 4 Lieutenant Colonel Startzell. If we could please go,
 5 briefly, to Exhibit 6, what's marked Exhibit 6.
 6 (Deposition Exhibit 6, remotely introduced
 7 and provided electronically to the court reporter.)
 8 Q. (BY MR. SEBY) And this exhibit is two
 9 emails. I'd like to focus on the latest email at the
 10 top, which is Monday, August 22nd, 2016, from Colonel
 11 Henderson to Brigadier General Spellmon. Lieutenant
 12 Colonel Startzell, you are copied on this email. And
 13 this email is a -- can you see the opening sentence
 14 there in Colonel Henderson's note, which is the "BLUF"
 15 section?
 16 A. Yes.
 17 Q. Okay. As a matter of protocol, why does
 18 Colonel Henderson say to his superior officer that --
 19 actually, if you could just explain what that -- to
 20 your understanding, what he's doing and saying in that
 21 bottom line up front executive summary, is what I
 22 understand that's akin to.
 23 A. Yes. It sounds like he's just trying to
 24 summarize a conversation for situational awareness.
 25 Q. On behalf -- and the conversation that

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1 he's summarizing is with the governor of North Dakota,
 2 Jack Dalrymple. And he's doing that through his
 3 superiors so that they can provide that information to
 4 Ms. Jo-Ellen Darcy, who is the head of the Civilian
 5 Civil Works within the Corps. Is that accurate?
 6 A. Yeah, that sounds like what is written,
 7 yes.
 8 Q. So then there's a "DETAILS" section below
 9 that. Do you see that?
 10 A. Yes.
 11 Q. It's talking about Ms. Darcy speaking with
 12 the governor and this being a briefing for their
 13 benefit -- Ms. Darcy's benefit. And he's -- Colonel
 14 Henderson is recounting his conversation with Governor
 15 Dalrymple, in paragraph 2, with several bullets of
 16 topics within Colonel Henderson's conversation with
 17 Governor Dalrymple. Is that how you're reading this
 18 email?
 19 A. Yeah. Do you mind if I just --
 20 Q. Take your time to --
 21 A. -- take a look at this?
 22 Q. Yes, of course, please.
 23 A. (Deponent examined document.) Okay.
 24 Q. All right. So under paragraph No. 2, that
 25 reads, "A few notes from my call with Governor

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1 Dalrymple are listed below." If you would go down to
 2 what Colonel Henderson has noted as his fifth bullet.
 3 And there, he's recounting --
 4 MR. SEBY: If you could put that up.
 5 There we go.
 6 Q. (BY MR. SEBY) -- that the "he" that that
 7 refers to is Governor Dalrymple. Do we agree?
 8 A. Yes.
 9 Q. And he's talking about any permit --
 10 special use permit from the Standing Rock Sioux Tribe
 11 at this point, right?
 12 A. Right.
 13 Q. And that second sentence, the "I" is
 14 Colonel Henderson, right? "I relayed to him . . ."
 15 A. Yes.
 16 Q. But the governor in the first sentence is
 17 asking for the Corps -- Colonel Henderson, in
 18 particular, at the district, your superior officer --
 19 to deny that permit, as long as the encampment is
 20 there. And so Colonel Henderson's response is that
 21 he's saying, "I would balance certain things in making
 22 a decision on whether to issue a permit." Is that what
 23 the context of that is about?
 24 A. Yes, I believe so.
 25 Q. And so the things he says there to balance

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1 are life, health, safety, sanitation, risk with freedom
 2 of speech and freedom of assembly rights. Is that
 3 accurate?
 4 A. Yes.
 5 Q. Are you aware of anything in the Army
 6 Corps of Engineers special use regulations or policies
 7 that call for such balancing?
 8 A. Not specifically, but I would say that the
 9 Federal government has an interest in upholding all of
 10 those.
 11 Q. And what evidence do you have for that in
 12 the Corps regulations that govern the special use
 13 permitting process?
 14 A. I don't think anything specifically in
 15 special use permitting process talks about this.
 16 Q. Do we agree that there are very specific
 17 provisions in the regulations and policies that
 18 implement them?
 19 A. I would agree there are specific
 20 requirements.
 21 Q. Thank you. Earlier, Lieutenant Colonel
 22 Startzell, I understood you, when we were talking
 23 about -- you mentioned, I think, a special use permit
 24 is a tool that's available. And we talked about other
 25 options, and you recognized there was at least one

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1 other option. And you said that your goal was to
 2 provide guidance and recommendation to your commanding
 3 officer, Colonel Henderson. What was your
 4 recommendation on which tool to use?
 5 A. I don't recall specifically providing a
 6 recommendation in this case to him.
 7 Q. You don't recall, among the options that
 8 you mentioned, a special use permit route or notifying
 9 local law enforcement to have the trespassers removed?
 10 You don't recall making a recommendation between those
 11 two options that you identified?
 12 A. No. I think -- I think he was already --
 13 he already thought the special use permit was the way
 14 to go in this case.
 15 Q. And by that, do you mean you believe he
 16 rejected the other option?
 17 A. I think he had considered both and thought
 18 the special use permit was the way to go.
 19 Q. So he made a decision to go the special
 20 use permit route?
 21 A. Yes.
 22 Q. Okay. Do you know what the basis of that
 23 decision was?
 24 A. I think, based on the size of the crowd,
 25 there was a concern that -- and their conduct, there

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1 was a concern that forcibly removing them was not up to
 2 us at this point.
 3 Q. Well, I thought you said the other option
 4 was to contact local law enforcement and to advise them
 5 that they were trespassing on Corps property; and, as
 6 the landowner, you were asking them to be removed as
 7 such.
 8 A. I think that was an option, yes.
 9 Q. And are you telling me that you didn't
 10 have a recommendation between those two options?
 11 MS. BOBET: Objection, asked and
 12 answered.
 13 Q. (BY MR. SEBY) Did you, sir, make a
 14 recommendation to your commanding officer?
 15 MS. BOBET: Objection, asked and
 16 answered.
 17 Q. (BY MR. SEBY) Did he ask for your input
 18 on those options?
 19 A. I don't remember. I don't remember if he
 20 directly asked for input on that decision.
 21 Q. And you did not provide any, correct?
 22 A. Not that I can remember.
 23 Q. So just to clarify your earlier testimony,
 24 you did not provide a recommendation or have one?
 25 MS. BOBET: Objection, asked and

ND OBJ:
Introduces new
material

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1 answered.

2 Q. (BY MR. SEBY) Please answer the question.

3 A. So, in general, I provided

4 recommendations. That was one of my jobs. However, I

5 don't know if I provided one specifically between those

6 two choices.

7 Q. Okay. Are you aware whether Colonel

8 Henderson was provided any guidance amongst those two

9 choices by anyone, other than yourself?

10 A. I think he received some -- I think from

11 the Project Office and the Operations Division he

12 received -- he got information that that was a tool

13 that they could use for this situation.

14 Q. Okay.

15 A. But outside of that, I don't know.

16 MR. SEBY: All right. If we could please

17 move to -- bear with me one moment, please. If we

18 could move to Exhibit 18, please.

19 (Deposition Exhibit 18, remotely

20 introduced and provided electronically to the court

21 reporter.)

22 Q. (BY MR. SEBY) Colonel -- Lieutenant

23 Colonel Startzell, was one of your responsibilities as

24 deputy district commander at the time to create or

25 review drafts of what are called "Corps storyboards"?

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1 A. Yes.

2 Q. What is the purpose of a Corps storyboard?

3 A. They were to consolidate a bunch of

4 information and provide a summary of things going on.

5 Q. And who was the recipient of -- or who had

6 access to the Corps storyboards?

7 A. I would usually email them to a

8 distribution list whenever I created them. It sounds

9 like the one that (inaudible) has some addressees on

10 it.

11 Q. Sure, it does. Do you select the

12 recipients, or is there a protocol for that?

13 A. So I think, initially, I selected some

14 recipients. And then Colonel Henderson or other

15 leaders above him would ask to add some additional

16 personnel, for their awareness.

17 Q. So in this instance at Exhibit 18, this

18 email is from a Lieutenant Colonel Frank Tedeschi to

19 Donald Jackson -- Major General Donald Jackson; is that

20 right?

21 A. Yes.

22 Q. And do you see that you're copied on this

23 email there, down at the bottom of the "Cc" list?

24 A. Yes.

25 Q. And so in this instance, Lieutenant

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1 Colonel Tedeschi is transmitting the Corps storyboard

2 of September 11, 2016, right?

3 A. Yes.

4 Q. And now let's go to the -- the storyboard

5 board which is attached, right? And it's dated, at the

6 bottom, September 16th. And that's a -- that's a

7 representation of events and happenings in the district

8 with respect to Dakota Access Pipeline, as of that

9 date. Is that a fair way to understand what this is?

10 A. Yes, as of 11 September on this one.

11 Q. Yeah. Well, actually, it's -- yeah,

12 November 11th -- pardon me, excuse me. September 11,

13 2016; is that correct?

14 A. Yes.

15 Q. And then it says, category, "Situation."

16 "Last 72," does that mean 72 -- last 72 hours?

17 A. Yes, that's what "Last 72" means.

18 Q. And then the next category, it says, "Next

19 72." Again, that's the next 72 hours?

20 A. Right.

21 Q. Okay. And can you see there under the

22 "Next 72" hours it says NWQ (sic), NWD, and HQUSACE?

23 So the NWO, I think you've told us that's the district,

24 right?

25 A. Yes.

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1 Q. And NWD is the division?

2 A. Yes.

3 Q. And HQUSACE is United States Army Corps of

4 Engineers Headquarters?

5 A. Right.

6 Q. Okay. And so it goes on to say those

7 entities, all three of them, ". . . will continue to

8 monitor the situation and consider Special Use Permits

9 and secondary access points to campsites." What does

10 that mean, in your understanding?

11 A. So the way I read it now, it means that we

12 would continue to consider special use permits where

13 appropriate. And the secondary access points, I don't

14 recall what that was about.

15 Q. And "to campsites," what is that referring

16 to? Is this referring to the protest encampments

17 located on Corps land?

18 A. Probably.

19 Q. Who wrote this?

20 A. I probably drafted this.

21 Q. Okay. Why did you use the -- why did you

22 call the protest encampments that you referred to as

23 containing trespassers because no permit had been

24 issued, why do you now call them "campsites"?

25 A. I don't know.

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18
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<p style="text-align: right;">Page 142</p> <p>1 Q. All right. Under the "NWO Commanders</p> <p>2 Assessment," is that referring to Colonel Henderson?</p> <p>3 A. Yes.</p> <p>4 Q. And so if you wrote this, Lieutenant</p> <p>5 Colonel Startzell, and you're making a characterization</p> <p>6 of your commanding officer's assessment, how did you do</p> <p>7 that? How did you arrive at understanding what his</p> <p>8 assessments was?</p> <p>9 A. Normally, I would have discussions with</p> <p>10 him or I would -- given his intent and discussion with</p> <p>11 the staff, I would draft what I think his assessment</p> <p>12 would be.</p> <p>13 Q. Did you ever confirm it with him before</p> <p>14 finalizing the storyboard?</p> <p>15 A. Yes.</p> <p>16 Q. So he approved this language, is what</p> <p>17 you're saying?</p> <p>18 A. I don't know if he approved this</p> <p>19 particular day. Sometimes he was traveling, and I</p> <p>20 would write it; sometimes he would review it. But</p> <p>21 generally, he would come back to me and tell me if</p> <p>22 there was a problem with what I was drafting on his</p> <p>23 behalf.</p> <p>24 Q. Were you in the habit of issuing</p> <p>25 characterizations of your commanding officer's</p>	<p style="text-align: right;">Page 144</p> <p>1 Headquarters USACE.</p> <p>2 Q. And were you involved in such dialogue</p> <p>3 with those superior entities within the Corps of</p> <p>4 Engineers?</p> <p>5 A. I was involved from a staff level. I was</p> <p>6 not involved in the commander-to-commander discussions</p> <p>7 at that level.</p> <p>8 Q. Were you involved in dialogue with</p> <p>9 higher-level leadership before making any decisions on</p> <p>10 the special use permit application sought by Chairman</p> <p>11 Archambault?</p> <p>12 A. I don't believe that I was.</p> <p>13 Q. Ever?</p> <p>14 A. Not that I can recall.</p> <p>15 Q. Did anyone tell you about such dialogue</p> <p>16 that you did not participate in with higher-level</p> <p>17 leadership before making any decisions regarding a</p> <p>18 special use permit sought by Chairman Archambault?</p> <p>19 A. Not that I can recall.</p> <p>20 MR. SEBY: Okay. If we could go to</p> <p>21 Exhibit 20, please. I apologize, everyone. Let's go</p> <p>22 to Exhibit 19 first. I'm sorry.</p> <p>23 (Deposition Exhibit 19, remotely</p> <p>24 introduced and provided electronically to the court</p> <p>25 reporter.)</p>
<p style="text-align: right;">Page 143</p> <p>1 assessment without his approval?</p> <p>2 A. I think there were times when he couldn't</p> <p>3 review it in a timely manner, so I would draft it and</p> <p>4 send it.</p> <p>5 Q. Well, was this one of those times?</p> <p>6 A. I don't remember, specifically.</p> <p>7 Q. So you don't recall whether or not you</p> <p>8 were authorized to make this statement?</p> <p>9 A. I think he gave me latitude to do things</p> <p>10 like this on his behalf when he was not available.</p> <p>11 Q. Did he ever object to your using this</p> <p>12 language later on after you issued it?</p> <p>13 A. Not that I can recall.</p> <p>14 Q. Okay. So that last sentence of the</p> <p>15 Northwest District Commander's assessment reads --</p> <p>16 would you read that aloud, please, "Chairman</p> <p>17 Archambault . . ."</p> <p>18 A. "Chairman Archambault again requested a</p> <p>19 Special Use Permit on Friday, and we continue to</p> <p>20 reserve the right to grant a SUP, but will need</p> <p>21 dialogue with higher level leadership before making any</p> <p>22 decisions."</p> <p>23 Q. Who is the higher-level leadership that</p> <p>24 you are referring to needing to speak with?</p> <p>25 A. That could be Northwestern Division or</p>	<p style="text-align: right;">Page 145</p> <p>1 MR. SEBY: It's being pulled up.</p> <p>2 Q. (BY MR. SEBY) Exhibit 19 is an email from</p> <p>3 Frank Tedeschi again, Lieutenant Colonel, from the Army</p> <p>4 Corps Headquarters, to Major General Donald Jackson,</p> <p>5 copied to a large list of Corps individuals. And,</p> <p>6 Lieutenant Colonel Startzell, you are among the</p> <p>7 recipients of this as a "Cc"; is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. And the transmittal here is another</p> <p>10 storyboard from the day following the day we just</p> <p>11 discussed, the September 11th storyboard. Now we're</p> <p>12 looking at a storyboard for the next day; is that</p> <p>13 correct?</p> <p>14 A. Yeah, it looks like it.</p> <p>15 Q. Okay. Did you author this storyboard,</p> <p>16 sir?</p> <p>17 A. I can't see it, but chances are, yes.</p> <p>18 Q. Okay. I apologize. We're going to go</p> <p>19 forward to that.</p> <p>20 MR. SEBY: Blow that up, if we can. Okay.</p> <p>21 Q. (BY MR. SEBY) So here is a storyboard</p> <p>22 dated September 12th, 2016. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. So again, there's those same</p> <p>25 headings as the one the day before: "Situation,"</p>

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<p style="text-align: right;">Page 146</p> <p>1 "Last 24," and "Next 24 (sic)." In the Next 24 (sic),</p> <p>2 the first bullet there says, "Omaha District will</p> <p>3 consider contacting SRST" -- Standing Rock Sioux</p> <p>4 Tribe -- "Chairman regarding the way ahead for the</p> <p>5 Special Use Permit and request for a second access</p> <p>6 point to the camp sites [sic]."</p> <p>7 So the day before, your -- the storyboard</p> <p>8 that you created said that the District, the Division,</p> <p>9 and Headquarters would consider what to do with the</p> <p>10 special use permit with respect to the Standing Rock</p> <p>11 Sioux Tribe; here, it says the Omaha District. Did</p> <p>12 something change in the way in which the Corps decided</p> <p>13 to proceed?</p> <p>14 A. I don't know. I can't remember why the</p> <p>15 verbiage would have changed.</p> <p>16 Q. Your third bullet, sir, on the document</p> <p>17 you wrote notes a planned protest at the White House</p> <p>18 the following day. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. How did you become aware of that?</p> <p>21 A. I can't remember. Potentially through</p> <p>22 social media.</p> <p>23 Q. Were you in the practice of monitoring</p> <p>24 social media with respect to the events concerning the</p> <p>25 DAPL protest, generally?</p>	<p style="text-align: right;">Page 148</p> <p>1 media. We will continue to dialogue with" -- the</p> <p>2 district and Headquarters -- "regarding the Special Use</p> <p>3 Permit to provide a unified response to the SRST's</p> <p>4 request." Are you involved at this point in the</p> <p>5 dialogue with the division and Headquarters regarding</p> <p>6 the special use permit?</p> <p>7 A. I think my role was providing</p> <p>8 informational updates and answering questions.</p> <p>9 Q. To whom?</p> <p>10 A. To whatever staff entities asked questions</p> <p>11 about it, NWD or Headquarters.</p> <p>12 Q. You were in dialogue with them in that</p> <p>13 regard?</p> <p>14 A. Yes.</p> <p>15 Q. Who, in particular?</p> <p>16 A. There could be a lot of individuals that I</p> <p>17 discussed this with. It could have been the division</p> <p>18 deputy commander. It could have been security, Public</p> <p>19 Affairs, any of the staff entities that had questions</p> <p>20 that may relate to their jobs.</p> <p>21 MR. SEBY: Okay. If we could go back to</p> <p>22 the email that transmits this storyboard, your</p> <p>23 storyboard, Frank Tedeschi's email of September 12,</p> <p>24 please. And blow that up, enlarge it, please.</p> <p>25 Q. (BY MR. SEBY) So it looks like Lieutenant</p>
<p style="text-align: right;">Page 147</p> <p>1 A. Our Public Affairs Office would normally</p> <p>2 monitor it and let us know if they saw anything of</p> <p>3 significance.</p> <p>4 Q. Okay. Over in the block that's on the</p> <p>5 left-hand side of the document is the -- again, the</p> <p>6 "NWO Commanders Assessment." For this particular day,</p> <p>7 did you consult with Colonel Henderson on the language</p> <p>8 that you used here characterizing his assessment?</p> <p>9 A. I don't know.</p> <p>10 Q. Do you recall not talking to him about</p> <p>11 this or getting approval?</p> <p>12 A. I don't recall, one way or another.</p> <p>13 Q. You don't recall not talking to him about</p> <p>14 it, though, do you?</p> <p>15 A. No. I don't recall, one way or the other.</p> <p>16 Q. That last sentence says, "We will" --</p> <p>17 A. I'm looking at it right now.</p> <p>18 Q. Yeah. Check it out.</p> <p>19 A. (Deponent examined document.) Okay.</p> <p>20 Q. So the -- I take it the first sentence is</p> <p>21 concerning litigation that's going on in Federal</p> <p>22 Courts, which is of no concern to this question. But</p> <p>23 the next sentence says, "NWO will continue to monitor</p> <p>24 the increasing size of the encampments located on USACE</p> <p>25 lands through the local law enforcement and social</p>	<p style="text-align: right;">Page 149</p> <p>1 Colonel Tedeschi is summarizing elements of your</p> <p>2 storyboard. Is that fair?</p> <p>3 A. Yes.</p> <p>4 Q. Do you agree with those statements?</p> <p>5 MS. BOBET: Could we see the bottom part</p> <p>6 of that email as well, please?</p> <p>7 A. Yeah. I mean, they look -- they seem to</p> <p>8 align with the storyboard, but I could be wrong on some</p> <p>9 of the -- I don't know if he cut-and-pasted or if he's</p> <p>10 summarizing.</p> <p>11 Q. (BY MR. SEBY) At the very end there, if</p> <p>12 we can go down just a spot. There, that last sentence</p> <p>13 before "Respectfully." "The UOC continues to monitor</p> <p>14 and is in synch [sic] with NWD, NWO, and HQ efforts."</p> <p>15 Who is the UOC -- or what is it?</p> <p>16 A. UOC is the USACE Operations Center.</p> <p>17 Q. How is that different than the</p> <p>18 Headquarters or the district or the division?</p> <p>19 A. The UOC is the current Operations Center</p> <p>20 within Headquarters USACE. So they deal with daily</p> <p>21 reporting and daily events. They're basically the</p> <p>22 emergency management (inaudible) for the Headquarters.</p> <p>23 Q. And who -- who is the leadership of the</p> <p>24 UOC?</p> <p>25 A. Lieutenant Colonel Tedeschi was the</p>

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1 current operations chief.

2 Q. Okay.

3 A. So he ran -- on a day-to-day basis, he was

4 in charge of it.

5 Q. So he's reporting that he's doing that.

6 He continues to monitor and is in sync with the

7 division, the district, and HQ efforts?

8 A. Right.

9 Q. What efforts is he referring to?

10 MS. BOBET: Objection, calls for

11 speculation.

12 Q. (BY MR. SEBY) If you know.

13 A. I think he just means to say that he's

14 staying in close contact with us and continuing to help

15 leadership understand what's going on.

16 Q. Okay. So what's the date of this email,

17 sir, if you can identify it at the top?

18 A. Can you go up to the very top? So the

19 date of the email is September 12th.

20 Q. Time of day?

21 A. 4:10 p.m.

22 Q. And if we could please turn to Exhibit 22.

23 (Deposition Exhibit 22, remotely

24 introduced and provided electronically to the court

25 reporter.)

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1 MR. SEBY: If we could just enlarge that.

2 Q. (BY MR. SEBY) There's no attachments to

3 this email. It's from Eileen Williamson, dated

4 Thursday, September 15th. And it's addressed to a

5 number of Corps people. And you are one of the

6 addressees, Lieutenant Colonel Startzell. And in the

7 "Cc" list I see your commanding officer John Henderson,

8 Colonel Henderson, correct?

9 A. Yes.

10 Q. And the subject matter says, "DAPL Daily

11 Update PAO." And so that's the Public Affairs Office,

12 or officer, providing an update, right?

13 A. Yes.

14 Q. So three days after the storyboard that

15 you authored saying that you're working on the --

16 thinking about what to do with the SUP and how to move

17 forward, the individual who works for you, Eileen

18 Williamson, sends this email, which says, simply -- if

19 you would read, please, what the text of the email

20 says.

21 A. It says, "Draft Press release submitted

22 for Special Use Permit. Continue to screen calls to

23 triage media queries although the number has dropped

24 significantly since Friday."

25 Q. That first sentence, what does that mean,

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1 to your knowledge, that one of your direct reports

2 says? Had you discussed this with her prior to this

3 email?

4 A. I don't remember. It's very likely.

5 Q. Yes?

6 A. Again --

7 MS. BOBET: Objection, asked and

8 answered.

9 A. -- I don't remember.

10 Q. (BY MR. SEBY) Would it have been unusual

11 for her to have sent this email without discussing the

12 topic with you at all, especially since you were

13 working on the storyboard saying it?

14 A. Yeah. This is the type of thing that

15 would normally have been discussed, yes.

16 Q. With you?

17 A. Yes.

18 Q. Among others?

19 A. Correct.

20 Q. Do you know what she's referring to here

21 with that first sentence statement?

22 A. It looks like she -- it looks like it's

23 the draft of a press release that will be released

24 announcing the special use permit.

25 Well, there's no attachment to this email.

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1 MS. BOBET: Do you have a question related

2 to that, Mr. Seby?

3 MR. SEBY: Yeah. I'm trying to understand

4 what the witness is saying, because there's no

5 attachment that indicates what he just said. So I'm

6 asking him to clarify his testimony.

7 A. I mean, I don't know why there's nothing

8 attached. I'm not sure if it was submitted as a hard

9 copy to someone for review, you know, or otherwise.

10 Q. (BY MR. SEBY) Well, what is she being

11 submitted?

12 MS. BOBET: Objection, calls for

13 speculation.

14 Q. (BY MR. SEBY) To the extent you know,

15 sir. Your subordinate stated she submitted a draft

16 press release regarding the special use permit. What

17 do you make of that, to the extent you know?

18 A. I don't really know. I can't recall what

19 exactly she was talking about.

20 MR. SEBY: Okay. Exhibit 23, please.

21 (Deposition Exhibit 23, remotely

22 introduced and provided electronically to the court

23 reporter.)

24 Q. (BY MR. SEBY) So here are two emails in a

25 string in Exhibit 22 -- pardon me, 23. We're on

151:2-13
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1 Exhibit 23. There is an attachment to this. The

2 attachment is referred to in the email as a special use

3 permit map. Do you see that?

4 A. Yes.

5 Q. And the top email in the chain of two is

6 from Colonel John Henderson to you, Lieutenant Colonel

7 Startzell, and some of your colleagues in the Corps,

8 attaching a special use permit map. And Colonel

9 Henderson is sending the map to the distribution group,

10 which includes you. Do you see that?

11 A. I do.

12 Q. And the map came to Colonel Henderson, per

13 the email below, from Ms. Diane McGee, who is the real

14 estate division staff member in the Omaha District. Do

15 you recognize that name?

16 A. I don't remember that specific name.

17 Q. Okay. But you don't dispute the map

18 that's attached here and copied to you, do you?

19 A. No, I don't.

20 Q. And what is this map on the exhibit? If

21 we could go to the exhibit attached. What is the title

22 of the map there noted as Exhibit A? Do you know what

23 that refers to, sir?

24 A. The title is "Oahe Dam and Reservoir

25 Special Use Permit."

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1 Q. And what is Exhibit A referring to?

2 A. I don't know, but if I had to guess, I

3 would say that was an exhibit for -- that was included

4 with the special use permit; Exhibit A of the special

5 use permit.

6 Q. And what's the date of the map there on

7 the bottom?

8 A. 13 September.

9 Q. Had you seen this map prior to receiving

10 it from Colonel Henderson via this email and the

11 exhibit on September 15th?

12 A. I don't remember.

13 Q. And were you involved in the development

14 of this map?

15 A. I don't remember.

16 Q. Were you involved in the development of

17 the special use permit?

18 A. So as I said before, I was -- I coordinate

19 a lot with the staff, but I don't recall specifically

20 processing the permit myself.

21 Q. Do you recognize the areas depicted on the

22 map that's up on the screen that you're viewing?

23 A. Yes, it looks familiar.

24 Q. And do you see that --

25 A. Can we expand that?

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1 Q. Yes.

2 MR. SEBY: Can we show the legend first,

3 please? There we go.

4 Q. (BY MR. SEBY) So the very first

5 colored --

6 MR. SEBY: I'm sorry. The legend below

7 that. There you go, that area.

8 Q. (BY MR. SEBY) Do you see the legend that

9 is a Corps depiction of certain features on the map?

10 A. Yes.

11 Q. Do you see the blue boundary that's

12 entitled "USACE Project Boundary"?

13 A. Yes.

14 Q. Does that mean those are Corps of

15 Engineers-managed lands owned by the United States, but

16 under the supervision and control of the Army Corps of

17 Engineers?

18 A. Yes.

19 Q. All right. And do you see the area below

20 that, which is a yellow hash mark line entitled

21 "Special Use Permit Area (plus or minus 41.34 Acres)"?

22 A. Yes.

23 Q. All right. Is the yellow area marked on

24 this map, sir, within the Corps project boundary

25 denoted by the blue hash line?

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1 A. Yeah, it appears that it is.

2 Q. Okay. And, sir, let's go back to the

3 legend. Do you see where it identifies the special use

4 permit area as plus or minus 41.34 acres?

5 A. Yes.

6 Q. How can it be that the Corps of Engineers

7 would propose a map of approximately twice the size of

8 the property that Colonel Archambault's permit

9 application sought from the Corps? How did that

10 happen?

11 MS. BOBET: Objection, mischaracterizes

12 the evidence.

13 MR. SEBY: The permit application speaks

14 for itself, and it says that number, Ms. Bobet. And

15 I'm asking how this document now says something twice

16 as large. The permit application didn't seek this

17 amount.

18 MS. BOBET: The objection stands. You can

19 answer.

20 A. Yeah. I'm not sure why we selected that

21 amount of land, that parcel. I'm not sure.

22 Q. (BY MR. SEBY) Were you involved in that

23 topic of discussion?

24 A. Probably at some point, but I don't

25 remember specifics about selecting those parcels.

157:2-
10;
157:20-
158:11
602

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1 Q. Who selected that number?

2 A. I think it was probably our real estate

3 division, as they were trying to find land that was

4 appropriate for the permitting area.

5 Q. Was it because you were trying to capture

6 the existing or preexisting protest camp on Corps

7 property?

8 A. I don't know.

9 Q. Do you have any reason to believe that

10 wasn't the case?

11 A. No.

12 Q. Okay. Do you have any explanation for why

13 this map was created concurrent with your storyboards

14 that we just talked about as prior exhibits?

15 A. Can you ask that again?

16 Q. Can you provide any explanation for the

17 date of this map of September 13, 2016 in conjunction

18 with your earlier statements noted on the storyboards

19 that you have advised that you authored?

20 MS. BOBET: Objection, ambiguous.

21 Q. (BY MR. SEBY) Do you view this in

22 conflict with anything that you've said in prior

23 emails, sir?

24 A. No.

25 Q. All right. Sir, if we could please go to

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1 Exhibit 24.

2 (Deposition Exhibit 24, remotely

3 introduced and provided electronically to the court

4 reporter.)

5 MR. SEBY: And blow that up, enlarge it,

6 so you can see who the email transmitter --

7 Q. (BY MR. SEBY) Who is it from and who are

8 you sending it to, if I can ask you to explain that?

9 Who is it from?

10 A. It is from myself to Chairman Archambault.

11 Q. And copy to Colonel Henderson?

12 A. Yes.

13 Q. And the date, sir?

14 A. It looks like Friday, September 16th.

15 Q. And the date -- or the time?

16 A. 5:22 p.m.

17 Q. Okay. And read aloud what the content of

18 your email to the chairman says.

19 A. It says, "Chairman Archambault: Attached

20 you will find the special use permit for your

21 signature, along with a notification letter, a map of

22 the approved site, and the pamphlet for public use of

23 projects. We will follow this up with a mailed copy to

24 you on Monday."

25 Q. Why did you say as part of what is

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1 attached is an approved map of the site?

2 A. I don't understand your question.

3 Q. Why did you choose the word "approved" map

4 of the site?

5 MS. BOBET: Objection, mischaracterizes

6 evidence.

7 Q. (BY MR. SEBY) Your word -- Lieutenant

8 Colonel Startzell, the words you just read are,

9 "Attached you will find the special use permit for your

10 signature, along with a notification letter, a map of

11 the approved site, and the pamphlet for public use of

12 projects. We will follow this up with a mailed copy to

13 you on Monday."

14 A. Yeah. I think what I was trying to show

15 him was the land that was available for the special use

16 permit.

17 Q. Why did you send this to the Chairman and

18 not Colonel Henderson?

19 A. I have trouble remembering, but it's quite

20 possible he was traveling.

21 Q. Was he unavailable?

22 A. Possibly.

23 Q. Do you recall, yes or no?

24 A. I don't recall.

25 Q. Can you explain why on September 16th you

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1 did this, when two days prior you were advising the

2 other members -- senior members of the Corps that you

3 were working -- that at least the district -- because

4 you didn't recall ever having any involvement in this,

5 other than monitoring or whatever the word you used.

6 But why is it now that you're the one transmitting it

7 to the applicant?

8 MS. BOBET: Objection; compound,

9 mischaracterizes the evidence. You can answer.

10 A. Yeah. My guess is that my boss was

11 traveling and, you know, he wanted me to go ahead and

12 send this to get it to Chairman Archambault as soon as

13 possible.

14 Q. (BY MR. SEBY) And what is the attachment,

15 sir, to your email? If you'd just look for a minute at

16 what this is and tell me what it is and who is it from

17 and who it is addressed to.

18 A. It's from the district commander to

19 Chairman Archambault. And then it looks like it's an

20 explanation that this is the package for the special

21 use permit.

22 Q. And so this is from District Commander

23 Colonel Henderson, right?

24 A. Yes.

25 Q. Would you read the second paragraph of

160:25-
161:7;
161:10-
13
401-
402;
602;
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<p style="text-align: right;">Page 162</p> <p>1 that letter from Colonel Henderson to Chairman</p> <p>2 Archambault.</p> <p>3 A. "Enclosed for your review and execution is</p> <p>4 the Special Use Permit."</p> <p>5 Q. I'm sorry, sir. The second sentence of</p> <p>6 the first paragraph.</p> <p>7 A. Okay. "I have decided to grant a Special</p> <p>8 Use Permit for the location south of the Cannonball</p> <p>9 River that you requested from the United States Army</p> <p>10 Corps of Engineers, so that the Standing Rock Sioux</p> <p>11 Tribe can gather and engage in a free speech</p> <p>12 demonstration."</p> <p>13 Q. Do you know why he granted a special use</p> <p>14 permit that was transmitted unsigned and had not yet</p> <p>15 received the demonstration of compliance with the</p> <p>16 conditions of the permit that you sent?</p> <p>17 A. I don't know.</p> <p>18 Q. Do you agree that grant suggests that it</p> <p>19 was final?</p> <p>20 A. Yeah. I think our intention was to offer</p> <p>21 it, and the expectation was that it would be followed</p> <p>22 up on by the tribe.</p> <p>23 Q. The act of granting a special use permit,</p> <p>24 sir, what does that mean to you? Final or not yet?</p> <p>25 A. It implies that it's final.</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. Did you sign it for Colonel Henderson?</p> <p>2 A. I don't know.</p> <p>3 Q. Did you ever sign letters for Colonel</p> <p>4 Henderson in his absence?</p> <p>5 A. Yes, there were times.</p> <p>6 Q. Is this one of those instances, sir?</p> <p>7 A. I don't know.</p> <p>8 Q. Is it possible?</p> <p>9 A. It's possible.</p> <p>10 MS. BOBET: Can you scroll down so the</p> <p>11 witness can see the bottom of the letter, the full</p> <p>12 document with the signature on it?</p> <p>13 Q. (BY MR. SEBY) Lieutenant Colonel</p> <p>14 Startzell, as we are looking at that signature, in the</p> <p>15 instances where you, quote, signed letters or documents</p> <p>16 for Colonel Henderson, did you do it in freehand, or</p> <p>17 did you have an auto-pen stamp?</p> <p>18 A. No, I don't believe ever used a stamp for</p> <p>19 him.</p> <p>20 Q. So in the instances where you did sign</p> <p>21 letters on his behalf in his name, you did it freehand?</p> <p>22 A. What I would do is I would sign my name</p> <p>23 for, and I would write "for" above his block.</p> <p>24 Q. Do you recall any instances where you used</p> <p>25 that manner of signing a letter for Colonel Henderson?</p>
<p style="text-align: right;">Page 163</p> <p>1 Q. Implies? Are you familiar with that term</p> <p>2 in Corps regulations?</p> <p>3 A. No.</p> <p>4 Q. You're not? I'm sorry?</p> <p>5 A. No.</p> <p>6 Q. Thank you. Could you come down to the</p> <p>7 second paragraph. Colonel Henderson does say,</p> <p>8 though -- his letter does, at least -- that the special</p> <p>9 use permit is transmitted for his review and execution,</p> <p>10 right?</p> <p>11 A. Yes.</p> <p>12 Q. What does review and execution mean to</p> <p>13 you?</p> <p>14 A. I don't know. I mean, I think I interpret</p> <p>15 that as he'll review it and then carry it out.</p> <p>16 Q. Do you know why this letter has no date on</p> <p>17 it?</p> <p>18 A. I don't.</p> <p>19 Q. Did you write this letter, Lieutenant</p> <p>20 Colonel Startzell?</p> <p>21 A. I don't think so, but I can't remember for</p> <p>22 sure.</p> <p>23 Q. Did you have any hand at all in any manner</p> <p>24 of writing it or reviewing it prior to it being signed?</p> <p>25 A. I probably reviewed it.</p>	<p style="text-align: right;">Page 165</p> <p>1 A. I don't recall any specifics.</p> <p>2 Q. But you're saying they exist?</p> <p>3 A. What I'm saying is that is the normal</p> <p>4 practice that I would have done.</p> <p>5 Q. Did you ever deviate in any instance from</p> <p>6 that normal practice?</p> <p>7 A. Not that I can recall.</p> <p>8 Q. Does that look like Colonel Henderson's</p> <p>9 signature, to you?</p> <p>10 A. I have no idea. I mean, it looks close.</p> <p>11 Q. Really?</p> <p>12 A. Yeah. I'm not sure.</p> <p>13 Q. All right. Do you believe that Colonel</p> <p>14 Henderson signed this letter and left it with you prior</p> <p>15 to you transmitting it to Chairman Archambault?</p> <p>16 A. I can't recall.</p> <p>17 Q. Well, how did you have it to send to</p> <p>18 Chairman Archambault?</p> <p>19 A. I don't know.</p> <p>20 Q. Well, you did send it, sir.</p> <p>21 A. Yes, apparently.</p> <p>22 Q. But you don't recall anything associated</p> <p>23 with how you got it and in what condition you received</p> <p>24 it for transmittal?</p> <p>25 A. No, I don't.</p>

164:10-23
Offer if prior testimony comes into evidence

163:19-164:9
401-402; 403;
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<p style="text-align: right;">Page 166</p> <p>1 MS. BOBET: Objection, compound.</p> <p>2 Q. (BY MR. SEBY) Do you recall Colonel</p> <p>3 Henderson discussing you doing this, with you?</p> <p>4 A. I don't.</p> <p>5 MR. SEBY: Could you please go to</p> <p>6 Exhibit 26.</p> <p>7 (Deposition Exhibit 26, remotely</p> <p>8 introduced and provided electronically to the court</p> <p>9 reporter.)</p> <p>10 MR. SEBY: Can you enlarge it so the</p> <p>11 witness can read the "To" and "From" and "Re" line and</p> <p>12 "Date."</p> <p>13 Q. (BY MR. SEBY) So this is from Colonel</p> <p>14 Henderson, as you can see, to Chairman Archambault on</p> <p>15 Friday, September 16, 2016, at 4:59 p.m. Lieutenant</p> <p>16 Colonel Startzell, is that the same day you transmitted</p> <p>17 the special use permit to Chairman Archambault?</p> <p>18 A. I think it was the same Friday -- was it</p> <p>19 Friday or Saturday?</p> <p>20 Q. Well, we can go back to the exhibit we</p> <p>21 just discussed and identify the date on Exhibit 24;</p> <p>22 because you did note that it was Friday, September 16,</p> <p>23 sir, and we discussed the time. Do you recall that?</p> <p>24 A. Okay.</p> <p>25 Q. So, yes, you agree it's the same day?</p>	<p style="text-align: right;">Page 168</p> <p>1 A. It says, "I hope all is well for you. Our</p> <p>2 staff will be sending you a copy of the permit by email</p> <p>3 soon; official copy with [sic] be sent by certified</p> <p>4 mail on Monday."</p> <p>5 Q. And then the next sentence.</p> <p>6 A. "We will send the attached press release</p> <p>7 out this evening at 7:00pm. I wanted to give you the</p> <p>8 courtesy of reviewing it a final time prior to our</p> <p>9 release."</p> <p>10 Q. So Colonel Henderson sent this email at</p> <p>11 4:59 p.m., and he's telling the chairman, "We have a</p> <p>12 press release, it's attached, and we're going to send</p> <p>13 it out in two hours. Wanted to give you the courtesy,</p> <p>14 a final time, prior to releasing it," correct?</p> <p>15 A. Yes, that looks right.</p> <p>16 Q. So you suggested earlier, didn't know,</p> <p>17 that Colonel Henderson wasn't in the office or was</p> <p>18 traveling. Is that -- did I understand what you said</p> <p>19 correctly?</p> <p>20 A. Yes. I mean, it's possible.</p> <p>21 Q. Well, he was able to communicate -- were</p> <p>22 you instructed to send that and not him, or why the two</p> <p>23 emails an hour apart?</p> <p>24 A. I don't remember.</p> <p>25 Q. Well, his email says his staff -- "Our</p>
<p style="text-align: right;">Page 167</p> <p>1 MS. BOBET: The exhibit is not up on the</p> <p>2 screen, if you're trying to go back to Exhibit 24.</p> <p>3 MR. SEBY: Oh, we sure can.</p> <p>4 A. Okay. Yes, so I see the email.</p> <p>5 Q. (BY MR. SEBY) Okay. Again, sir, note the</p> <p>6 time of day.</p> <p>7 A. I see it.</p> <p>8 Q. 5:22 p.m.; is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. And you sent it to Chairman Archambault,</p> <p>11 you copied Colonel Henderson, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Now let's go back to -- or return</p> <p>14 to Exhibit 25.</p> <p>15 THE REPORTER: I believe we were on 26.</p> <p>16 MR. SEBY: Yes, ma'am. Yes, that's</p> <p>17 correct. Let's return to Exhibit 26.</p> <p>18 Q. (BY MR. SEBY) Okay. Same day, Lieutenant</p> <p>19 Colonel Startzell, an hour earlier, approximately,</p> <p>20 right?</p> <p>21 A. Yes, that looks right.</p> <p>22 Q. And same day, an hour earlier, your</p> <p>23 commanding officer, Colonel Henderson, sends Chairman</p> <p>24 Archambault an email. And would you please read the</p> <p>25 second line of that email.</p>	<p style="text-align: right;">Page 169</p> <p>1 staff." I assume that includes you as the senior</p> <p>2 person amongst that group, right?</p> <p>3 A. Yes.</p> <p>4 Q. And you don't recall ever discussing this</p> <p>5 coordination for transmitting a special use permit to</p> <p>6 the Standing Rock Sioux Tribe chairman with respect to</p> <p>7 the protests ongoing on Corps property?</p> <p>8 A. I don't recall details of it, no.</p> <p>9 Q. Can we please look at the attachment</p> <p>10 together, sir, to this email. Can you identify what</p> <p>11 you're seeing?</p> <p>12 A. Yes. So this looks like the draft press</p> <p>13 release.</p> <p>14 Q. Does it say "Draft" on this, to you?</p> <p>15 A. No.</p> <p>16 Q. What does it say under the Corps logo?</p> <p>17 A. "For Release at 7 PM September 16, 2016."</p> <p>18 Q. Do you believe this to have been a draft?</p> <p>19 A. Well, I guess it depends on how you define</p> <p>20 "draft." But until it goes out and actually is</p> <p>21 published, it's still a draft. But this is probably</p> <p>22 very close to what actually went out, if not the same.</p> <p>23 Q. Do you have any reason to believe it's</p> <p>24 different than the one that was posted publicly?</p> <p>25 A. No, I don't.</p>

168:10-
15
602; 802

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1 Q. Did you write this draft or this document?

2 A. I believe our PAO wrote it, and I probably

3 reviewed it.

4 Q. When did you review it?

5 A. I don't remember.

6 Q. Do you recall reviewing it?

7 A. Not specifically, but I would normally

8 review this type of document before it went out.

9 Q. You're not aware that it was a surprise to

10 you, then, or you didn't review it?

11 A. No.

12 Q. Okay. Do you know who wrote it for your

13 review in the PAO?

14 A. Probably Eileen Williamson.

15 Q. Did she receive any input from commenters

16 on drafts?

17 A. Normally, yes.

18 Q. Do you know who provided comment on this

19 draft?

20 A. I don't.

21 Q. Colonel Henderson saw it before it was

22 finalized, correct?

23 A. I don't know.

24 Q. Well, he's transmitting it to the

25 chairman. Don't you think he would have known what he

Page 171

1 was transmitting?

2 A. Normally he would, yes.

3 Q. Who else, sir, would have reviewed it?

4 A. Probably counsel, potentially real estate,

5 and our Operations Division.

6 Q. Above the district level, who reviewed it

7 at the division? Let's start there.

8 A. I think the standard practice was the

9 public affairs chief at the Northwestern Division would

10 normally review these as well.

11 Q. And who is that individual?

12 A. I can't recall. I think her name was Amy,

13 Amy something.

14 Q. How about at Corps Headquarters? You were

15 saying in your storyboards that you were consulting

16 with them.

17 A. I don't know if they would have reviewed

18 this one.

19 Q. Do you have any personal explanation for

20 why this press release draft or final did not mention

21 any of the outstanding conditions stated in the permit

22 provided to Chairman Archambault or Colonel Henderson's

23 transmittal message -- letter transmitting it?

24 A. I don't, no.

25 Q. Can you read the press release, please, to

Page 172

1 yourself so we can discuss it.

2 A. (Deponent examined document.) Okay.

3 Could you go down? Okay.

4 Q. In what you just read in this document, do

5 you see any reference to the conditions precedent that

6 are specified for the permit to be granted?

7 A. No.

8 Q. Why does the language of this press

9 release say that Colonel Henderson informed Chairman

10 Archambault that he has been granted a special use

11 permit which allows the tribe to gather? Why would you

12 issue a press release that says something different

13 than the underlying permit itself requires in order for

14 it to be in effect?

15 MS. BOBET: Objection, mischaracterizes

16 evidence.

17 MR. SEBY: It's exactly what it says.

18 A. Can you ask the question again? I don't

19 understand.

20 Q. (BY MR. SEBY) Why does this use the word

21 "granting" a special use permit allowing activity?

22 Twice it uses the word grant -- or "granting."

23 A. Okay.

24 Q. Your answer, please?

25 A. I really don't understand that question.

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1 Q. Why is the word "grant" used an hour after

2 you transmitted a special use permit that was unsigned

3 and required the performance of certain activities by

4 the applicant before it could be granted under the

5 Corps procedures?

6 A. I think there was a -- there was an

7 expectation that the applicant would follow up with

8 their end of the deal.

9 Q. Why would you tender a permit to an

10 ongoing raging protest where you and other Corps

11 officials recognized the growing and violent nature of

12 the camps?

13 MS. BOBET: Objection, mischaracterizes

14 evidence.

15 Q. (BY MR. SEBY) Answer, please.

16 A. So I think -- I think, given all of the

17 activity at this time, this was a way to permit the

18 action in a more constrained area, not north of the

19 Cannonball.

20 Q. But still on Corps land where existing

21 protest camps existed?

22 A. Correct.

23 Q. Was this press release a mistake?

24 A. No, I don't think so.

25 Q. Do you understand that it was issued to

171:19-24
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1 media outlets and posted on the Corps of Engineers'

2 website?

3 A. Yes.

4 Q. In retrospect, do you think it was a

5 mistake or an error?

6 A. I think it was a -- it could cause some

7 confusion and the timing wasn't perfect.

8 Q. What do you mean by it "wasn't perfect"?

9 A. Well, I think we could have held off on

10 publishing it.

11 Q. Why?

12 A. Until the applicant had fulfilled their

13 end of the deal.

14 Q. Did they ever?

15 A. To my knowledge, no.

16 Q. Why wasn't the press release withdrawn?

17 A. I don't know.

18 Q. Are you aware that that press release, in

19 final form, remains today, November 19, 2021, on the

20 Corps of Engineers' public website today?

21 A. No, I'm not aware of that.

22 Q. Do you regret the issuance of this press

23 release?

24 A. No.

25 Q. Are you aware that this press release

Page 175

1 became a matter of public record shortly after it was

2 posted on the Corps of Engineers' website on

3 September 16, 2016?

4 A. Yes. That's pretty common for all of our
5 documents.6 Q. Was it purposely released for public
7 awareness and consumption? Was that an intentional
8 action?9 A. I'm sorry. I don't understand your
10 question.11 Q. Was this news release created for the
12 purpose and intention of making a public announcement?

13 A. I believe so.

14 Q. And are you aware that the Corps took
15 affirmative steps to make it publicly available,
16 starting on September 16th, 2016?17 A. I don't know -- I guess I don't know what
18 you're asking.19 Q. Was it created and intended to be released
20 as a public statement by the United States Army Corps
21 of Engineers?

22 A. Yes, I believe so.

23 MR. SEBY: Could we go to Exhibit 27,
24 please.

25 (Deposition Exhibit 27, remotely

Page 176

1 introduced and provided electronically to the court

2 reporter.)

3 Q. (BY MR. SEBY) Are you familiar with this

4 email? You're copied on it. It's an email from

5 Colonel Henderson to Ms. Eileen Williamson, who you've

6 identified previously as one of your reporting staff

7 people. And you are copied, sir, on this email; is

8 that correct?

9 A. Yes.

10 Q. This is an email from Colonel Henderson to

11 Eileen that is redacted by your counsel. We don't know

12 what it says. And we will later be informed the basis

13 for the redaction, so I'm not going to ask you about

14 that. But if you would go down below, on

15 September 18th, which is a Sunday, in the evening, at

16 8:45 p.m., Colonel Henderson was sent a letter -- or,

17 pardon me, an email entitled "Special Use Permit to the

18 Standing Rock Sioux Tribe." So this is two days after

19 the media release that we just discussed was issued to

20 the public. Colonel Henderson received an email from

21 the representative of the independent Lakota Nation.

22 Do you see that?

23 A. I do.

24 Q. Do you have any information about this

25 communication and who this entity is?

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1 A. I don't recall who this is or what this is
2 about.

3 Q. Are you familiar with this entity?

4 A. No. It doesn't ring a bell.

5 Q. Does the Corps recognize this entity as a
6 recognized tribal nation or government?7 A. I don't recall. I don't remember the
8 name. The name does not sound familiar as a recognized
9 tribe.

10 Q. Did you ever have any discussions with

11 Colonel Henderson with respect to this email?

12 A. Not that I can recall.

13 MR. SEBY: If we could please go to
14 Exhibit 25.15 (Deposition Exhibit 25, remotely
16 introduced and provided electronically to the court
17 reporter.)

18 Q. (BY MR. SEBY) This exhibit consists of

19 two emails, Lieutenant Colonel Startzell. The first

20 one is Thursday, September 15th, 2016, at 6:12 p.m.,

21 and it is to Colonel Torrey DiCiro and Ruddell. Do you
22 know those individuals?

23 A. I do.

24 Q. Who are they?

25 A. Colonel DiCiro was the deputy commander

174:16-21
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1 for the Northwestern Division, and Major Christian
2 Ruddell was the emergency operations chief for the
3 Northwestern Division.

4 Q. And you copied a number of individuals.
5 But your email at 6:12 p.m. says, "ALLCON." What does
6 that refer to?

7 A. That just stands for all concerned.

8 Q. And you're alerting them to Corps
9 visibility, also submitted through ENLink. Did you do
10 that?

11 A. Yes.

12 Q. Did you do that?

13 A. The submission through ENLink was either
14 by me or by one of the other authorized people in the
15 district.

16 Q. Okay. And you've got here -- the day
17 prior to the issuance of the media release you're
18 noting it as a pending press release on special use
19 permit for Standing Rock Sioux Tribe, correct?

20 A. Yes.

21 Q. And then you state a heading called
22 "WHEN," and you say that the goal is to publish the
23 special use permit and associated press release on
24 Friday, the 16th.

25 A. Yes.

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1 Q. Why did you make a point of issuing an
2 email notification ahead of time to these people? Were
3 they aware of this, or was this their first news of it?

4 MS. BOBET: Objection, compound.

5 A. Yeah. I think this was probably
6 socialized verbally before I sent this email. But this
7 email is to call their attention to it, just so they
8 knew who was coming.

9 Q. (BY MR. SEBY) And then down in the
10 section below entitled "WHY" -- do you see that?

11 A. Yes.

12 Q. Would you read the first line of the
13 section entitled "WHY."

14 A. In close coordination with all partnering
15 agencies and with the SRST, the Omaha District
16 developed a Special Use Permit to provide a Free Speech
17 Zone on USACE land south of the Cannon Ball [sic] River
18 near Cannon Ball, ND."

19 Q. Second sentence, please?

20 A. "The permit provides the Tribe with a
21 designated area to camp and exercise their 1st
22 Amendment rights, while protecting the government's
23 interests by denying their permit request to the north
24 of the Cannon Ball [sic] River, an area covered under
25 an existing grazing lease."

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1 Q. At the time you wrote this email to your
2 colleagues in the Corps, did you believe the permit was
3 final?

4 A. I believed that we were going to offer the
5 permit, yes.

6 Q. Unsigned, yet to be complied with by its
7 own terms, correct?

8 A. Yes.

9 Q. And in the first sentence, you used, in
10 your words, Lieutenant Colonel Startzell -- who are the
11 "partnering agencies" that you were in close
12 coordination with to develop this?

13 A. I'm not sure, specifically, but I think I
14 was just referring, in general, to anyone with a stake
15 that we had been in discussions with.

16 Q. Sir, you say, "partnering agencies." That
17 means outside the Corps of Engineers. Who are you
18 referring to?

19 MS. BOBET: Objection, asked and
20 answered.

21 Q. (BY MR. SEBY) Is it your testimony you
22 have no idea who you were referring to?

23 A. Well, I think, you know, I was probably
24 referring to Bureau of Indian Affairs, potentially the
25 U.S. Attorney's Office. And, I mean, that's all I can

Page 181

1 think of right now, as far as who I was referring to.

2 Q. Who did the close coordination with those
3 entities, sir?

4 A. The district and probably State of North
5 Dakota as well.

6 Q. What do you mean by that? Are you
7 suggesting the State of North Dakota participated in
8 the creation of this special use permit?

9 A. No. What I meant was we had just been in
10 coordination with them.

11 Q. Who are you referring to?

12 A. The State of North Dakota with the EOC and
13 the Sheriff's Office.

14 Q. Are you testifying, Lieutenant Colonel
15 Startzell, that you coordinated with the sheriff of
16 Morton County, Kirchmeier, and the participants in the
17 State of North Dakota's Emergency Operations Center
18 about the issuance of a special use permit? Is that
19 what you're saying?

20 A. So no, that's not what I'm saying. But
21 what I'm saying is we had been in coordination with
22 them up to this point.

23 Q. Well, your own words reflect the
24 coordination is with respect to the development of the
25 special use permit. I'm trying to understand, did you

181:23-
182:1;
182:9-12
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1 mean that, or now do you mean something differently?

2 MS. BOBET: Objection, mischaracterizes

3 testimony and evidence.

4 MR. SEBY: Well, it's very confusing what

5 the witness is saying, and I'm trying to clarify it.

6 Q. (BY MR. SEBY) Would you please do so,

7 sir.

8 MS. BOBET: Objection stands.

9 A. So I'm not exactly sure who I was talking

10 about; but I think it's, you know, possible BIA and

11 then, you know, the U.S. Attorney's Office. And then

12 that's probably it at this point.

13 Q. (BY MR. SEBY) Did you do any of the

14 coordinating that you're referring to?

15 A. I was not referring to just my

16 coordination, but I was referring to the coordination

17 that the district had done.

18 Q. As part of your reference to the district

19 doing coordination, did you participate in that course

20 of events?

21 A. I'm not really sure what you're asking.

22 Q. Were you a participant in the district's

23 efforts to closely coordinate with all partnering

24 agencies?

25 A. Yes.

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1 Q. And what was your role in doing so?

2 A. I think my biggest role was facilitating

3 communications within the district and with our

4 Headquarters.

5 Q. And what were you facilitating within the

6 district and with Headquarters?

7 A. Information.

8 Q. Regarding?

9 A. Regarding the special use permit.

10 Q. And what time periods did you do that,

11 Lieutenant Colonel Startzell?

12 A. I'm not really sure what you're looking

13 for from a timeline perspective; but up to this point,

14 up to the point of this email.

15 Q. Did you do it that day, or did you do it

16 several days prior, or longer periods of time? I'm

17 trying to understand. You've earlier said you weren't

18 involved in the special use permit, and now you advised

19 your superiors that you were in close coordination with

20 respect to its development. I'm trying to understand

21 what your story is. What is your testimony?

22 MS. BOBET: Objection; misstates the

23 evidence, argumentative. You can answer.

24 Q. (BY MR. SEBY) I'd like an answer.

25 A. The district was in close coordination.

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1 That's what I was trying to say in this email.

2 Q. And you were part of the district effort

3 to do that, is what you've said.

4 A. Correct.

5 Q. Are you willing to tell me about what that

6 involved?

7 A. Yes, if I understand your question.

8 Q. I'm trying to ask you and receive an

9 answer to, will you explain to me what the nature of

10 your involvement was specifically and over what time

11 period?

12 A. So I thought I explained, up to this

13 point, what my role was in the process. So I'm just

14 unclear what the question is.

15 Q. What was the scope of your close

16 coordination within the district regarding the special

17 use permit?

18 A. So my role is to keep our Headquarters

19 informed as to what was going on and make sure that our

20 project office understood what was going on as well.

21 Q. And over what time frame did you perform

22 those functions?

23 A. Since the beginning of the protests.

24 Q. With regard to the -- sir, we're talking

25 about the development of the special use permit,

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1 because that's your own words. I'm trying to

2 understand, what was the time frame during which you

3 were closely involved with partnering agencies, within

4 the district, in the development of a special use

5 permit for the Standing Rock Sioux Tribe?

6 A. A time frame? It must have been at least

7 two or three weeks before. I think the discussions

8 about the permit were developing for at least a month,

9 probably.

10 Q. Okay. Can we go to your second email in

11 the string within Exhibit 25, please, which is the

12 email we're on. And again, that paragraph entitled

13 "WHY," if we could go to the second page where that

14 "WHY" is present. It looks to me like you're, again,

15 referencing the close coordination with partnering

16 agencies and the Standing Rock Sioux Tribe, that the

17 district developed a special use permit; is that

18 correct?

19 A. Yes.

20 Q. And the second sentence, again, talks

21 about "the permit provides the Tribe," but it doesn't

22 identify any qualifications about the non-final nature

23 of the permit or the unsigned nature of the permit.

24 But you state, as a matter of current -- at this time,

25 it provides the tribe with a designated area for

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1 exercising of certain behavior, right?

2 A. Yes.

3 Q. The next sentence says, "The permit has

4 been vetted through vertical channels and discussed

5 with interagency partners . . ." What are the vertical

6 channels that you're referring to?

7 A. I believe what I was referring to there

8 was through Northwestern Division and Headquarters

9 USACE.

10 Q. Do you recall why you didn't mention in

11 this email to a very long list of Corps personnel why

12 there's no reference to the fact that the permit was

13 provided, tendered, not even signed by Colonel

14 Henderson, not signed by Chairman Archambault, and the

15 tribe didn't yet have any opportunity to comply with

16 the requirements in the permit proposed?

17 A. No, I don't.

18 Q. You don't what? You don't know?

19 A. I don't know.

20 MR. SEBY: Could you please go to

21 Exhibit 28.

22 (Deposition Exhibit 28, remotely

23 introduced and provided electronically to the court

24 reporter.)

25 MR. SEBY: And if we could enlarge that

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1 for the witness to see, please.

2 Q. (BY MR. SEBY) So you'll see, Lieutenant

3 Colonel, this is an email from the security specialist

4 for your Omaha District, Mr. John Ruden, to you,

5 correct? Do you see that?

6 A. I do.

7 Q. Copied, again, to a number of individuals

8 in the district and in the Corps. And the email is a

9 daily DAPL update.

10 A. Yes.

11 Q. Okay. And if you'd come down to the

12 paragraph that talks about the special use permit,

13 please. It's midway down. If you'd read that

14 paragraph, please.

15 A. "Special use [sic] Permit Received

16 approval letter for south of the Cannonball, requiring

17 \$100,000 performance bond, \$5,000,000 in insurance,

18 waiving \$75 application fee. If the Tribe signs it,

19 and provides the appropriate proof of insurance, etc.

20 the Corps will countersign it and it will be valid for

21 30 days after the Corps signature."

22 Q. And this email is dated September 19th,

23 2016, which is a Monday. And it followed the release

24 of -- the media release that we've been discussing in

25 final and to the public. When you read this email,

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1 Lieutenant Colonel Startzell, was that paragraph you

2 just read news to you? Was that information you

3 previously did not know or understand?

4 A. No.

5 Q. So you are aware of everything that that

6 gentleman says there?

7 A. Yes.

8 Q. Do you believe that to be an accurate

9 statement of circumstances?

10 A. Yes.

11 MR. SEBY: All right. If we could go to

12 Exhibit 29, please. And enlarge it for Lieutenant

13 Colonel Startzell to see the "From" and "To" and

14 "Date."

15 (Deposition Exhibit 29, remotely

16 introduced and provided electronically to the court

17 reporter.)

18 Q. (BY MR. SEBY) This is an email from

19 Colonel Henderson, dated Wednesday, September 21, 2016,

20 5:01 a.m., to a number of Corps recipients, which

21 includes you, Mr. -- Lieutenant Colonel Startzell; is

22 that correct? Do you see your name there?

23 A. Yes.

24 Q. Okay. And the email begins, "Team."

25 Colonel Henderson is referring to the recipients as a

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1 team, his team. Is that accurate?

2 A. Yes.

3 Q. And the email starts off, "I received a

4 call from Senator Heitkamp yesterday reference the

5 encampment area north of the River." Who is Colonel

6 Henderson referring to, Senator Heitkamp?

7 A. Senator Heitkamp was the senator for North

8 Dakota.

9 Q. United States Senator?

10 A. Yes.

11 Q. One of two?

12 A. Yes.

13 Q. Colonel Henderson references his

14 conversation with the Senator and some of the things

15 that she was calling to speak about. And then there's

16 a section within the background where he says, "My

17 responses." Do you take that to be my responses to the

18 United States Senator -- his responses to the United

19 States Senator?

20 A. Correct.

21 MS. BOBET: Where are you looking in this

22 document? I apologize. In the back?

23 MR. SEBY: No. I'm sorry. Pardon me.

24 This is a string of emails. I'm talking about the top

25 one. I identified the date of Wednesday,

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<p style="text-align: right;">Page 190</p> <p>1 September 21st, at 5:01 a.m. It's the very top. There</p> <p>2 you go. That's where I'm at, Ms. Bobet. Come on down</p> <p>3 to -- under "BACKGROUND," there are four numbered</p> <p>4 paragraphs. And then, as the exhibit on the screen</p> <p>5 shows, "My responses" is in yellow highlight. I'm</p> <p>6 asking the witness if the statement "My responses" is</p> <p>7 Colonel Henderson referencing what he said to the</p> <p>8 Senator.</p> <p>9 A. I don't know.</p> <p>10 Q. (BY MR. SEBY) Well, this email is from</p> <p>11 Colonel Henderson, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And he's talking about receiving a call.</p> <p>14 And she, the United States Senator, had several topics</p> <p>15 for discussion. Then in the email after explaining</p> <p>16 those topics that were asked about by the Senator, the</p> <p>17 email says, "My responses." And I'm asking you if you</p> <p>18 have any reason to believe that that's Colonel</p> <p>19 Henderson's reference to what he told the Senator in</p> <p>20 response to the topics he notes she raised just prior?</p> <p>21 Do you have any reason to believe that's not what that</p> <p>22 means?</p> <p>23 A. No. I believe that is probably what he</p> <p>24 meant by that.</p> <p>25 Q. What is the first of the statements under</p>	<p style="text-align: right;">Page 192</p> <p>1 statements that Mr. Ames made to Colonel Henderson in</p> <p>2 this email, "I just spoke with . . ."</p> <p>3 A. "Sir, I just spoke with Dean - The</p> <p>4 document has been signed by the Chairman, currently</p> <p>5 still at the SRST DC Office. The bond and the</p> <p>6 insurance matter is being worked and Dean is hoping</p> <p>7 that he will have all the information needed to present</p> <p>8 it to the Tribal Council later today or early tomorrow.</p> <p>9 Dean agreed to keep me informed along the way . . .</p> <p>10 Joel."</p> <p>11 Q. There's a reference to an individual by</p> <p>12 the name of "Dean" three times in the two sentences --</p> <p>13 three sentences you just read. Who is this "Dean"?</p> <p>14 A. I don't recall who Dean was, specifically,</p> <p>15 but it's probably the Chairman's chief of staff or</p> <p>16 public relations person.</p> <p>17 Q. Did you ever hear any further updates from</p> <p>18 Mr. Joel Ames with respect to updates concerning the</p> <p>19 movement of the special use permit within the Standing</p> <p>20 Rock Sioux Tribe?</p> <p>21 A. I believe I did, yes, but I don't remember</p> <p>22 specifics as far as time or content.</p> <p>23 Q. Were you ever informed, after this date,</p> <p>24 that the outstanding compliance requirements in the</p> <p>25 special use permit itself were ever complied with by</p>
<p style="text-align: right;">Page 191</p> <p>1 "My responses"?</p> <p>2 A. "The permit is only for the south side of</p> <p>3 the river, with associated conditions. The Tribe has</p> <p>4 not signed the acknowledgement for this permit yet nor</p> <p>5 met the liability requirements, so there is currently</p> <p>6 no permit in place."</p> <p>7 Q. Why, then -- on September 21st, 2016, why</p> <p>8 then previously, and in the Corps' media release and in</p> <p>9 your correspondence that we've discussed, is that not</p> <p>10 clearly stated?</p> <p>11 A. Yeah. I think the verbiage was confusing,</p> <p>12 and we could have been a little bit clearer about</p> <p>13 (inaudible) time.</p> <p>14 MR. SEBY: Thank you. Could you please go</p> <p>15 to Exhibit 30.</p> <p>16 (Deposition Exhibit 30, remotely</p> <p>17 introduced and provided electronically to the court</p> <p>18 reporter.)</p> <p>19 MR. SEBY: Enlarge the top there, please.</p> <p>20 Q. (BY MR. SEBY) This is also a compound</p> <p>21 email. I want to ask about the top one, Thursday,</p> <p>22 September 22, 2016, 7:25 a.m., from Joel Ames; who is,</p> <p>23 by designation in his signature block in the email</p> <p>24 below, the Tribal Liaison. And he is reporting to</p> <p>25 Colonel Henderson. And would you please read the</p>	<p style="text-align: right;">Page 193</p> <p>1 the tribe?</p> <p>2 A. No.</p> <p>3 Q. I'm sorry?</p> <p>4 A. No.</p> <p>5 Q. No, you're not aware of ever hearing such</p> <p>6 news?</p> <p>7 A. No. What I'm saying is, yes, I am aware</p> <p>8 that they were never complied with.</p> <p>9 Q. When did you become aware that they were</p> <p>10 never complied with? At what point and how did you</p> <p>11 realize that?</p> <p>12 A. I don't remember the exact timing, but I</p> <p>13 do believe at some point the district commander had a</p> <p>14 discussion with the staff about the fact that the tribe</p> <p>15 could not afford the bond or the insurance.</p> <p>16 Q. And what did that discussion consist of on</p> <p>17 that circumstance?</p> <p>18 A. That's all I remember about it.</p> <p>19 Q. Was that discussion, "What do we do about</p> <p>20 this, given the fact that they're not performing or</p> <p>21 complying with the permit?"</p> <p>22 A. I don't remember.</p> <p>23 Q. Did you ever discuss, "Oh, well, let's</p> <p>24 just disregard it and move on"?</p> <p>25 MS. BOBET: Objection, vague.</p>

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1 A. No, I don't recall that discussion,
2 either.

3 Q. (BY MR. SEBY) How long -- what amount of
4 time passed after you providing the permit
5 application -- or the permit -- tendering the permit
6 with the attachments -- which you did, the rules and
7 regulations of the Corps and the user pamphlet -- how
8 long after you did that, sir, did you come to realize
9 that they were not capable or unwilling to meet the
10 conditions in the document you transmitted?

11 A. I don't remember an exact date, but it was
12 a matter of, I would say, a few weeks, three or four
13 weeks.

14 Q. What was going on during that period of
15 time? Was the protest continuing?

16 A. Yes.

17 Q. The camps on Corps property remained?

18 A. Yes.

19 Q. Ongoing conflicts with law enforcement or
20 the State of North Dakota?

21 A. I believe there were some, yes.

22 Q. Are you aware of whether or not
23 individuals within the camp left the camp at any time?

24 A. I don't know specifics, but I know that
25 there were people going in and out.

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1 Q. To do what?

2 A. I don't know.

3 Q. Are you aware of any individuals in the
4 camp organizing and conducting activities against
5 private property and otherwise general areas of the
6 state using the camps as a safe haven?

7 MS. BOBET: Objection; compound, assumes
8 facts not in evidence.

9 MR. SEBY: I'm asking for his knowledge.

10 A. So I know that there were demonstrators
11 who conducted those events, but it was -- there was
12 never any proof that they came from certain camps, that
13 I can remember.

14 Q. (BY MR. SEBY) What evidence do you have
15 for that?

16 A. I don't have evidence for that.

17 Q. What do you base that statement on, then,
18 sir?

19 A. Well, we were aware that there were some
20 demonstrations on private land; but as far as the
21 reporting that we were hearing, it wasn't always clear
22 where the people were coming from for those events.

23 Q. So did you form -- is one of the bases of
24 your assertions now based upon your interactions and
25 monitoring the North Dakota Emergency Operations

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1 Center?

2 A. Can you ask that question again?

3 Q. Are you basing your statement upon
4 continued knowledge and monitoring of events within the
5 North Dakota Emergency Operations Center?

6 A. Some of the information we got was from
7 them, yes.

8 MR. SEBY: Would you turn to Exhibit 34
9 (sic), please.

10 MS. BOBET: Before we do that, if you
11 don't mind, I just wanted to discuss our timing a
12 little bit. I'm happy to go off the record, if that's
13 easiest for folks. Up to you, Mr. Seby.

14 MR. SEBY: Yes.
(Discussion off the record.)
(Recess, 3:14 p.m. to 3:30 p.m. MST.)

15 MR. SEBY: Exhibit 37, please.
(Deposition Exhibit 37, remotely
19 introduced and provided electronically to the court
20 reporter.)

21 MR. SEBY: If you could enlarge that.
22 This is two emails in this chain. If we could go down
23 to the first one from -- go up a little bit, please.

24 Q. (BY MR. SEBY) Do you see that, Lieutenant
25 Colonel Startzell, the email from Brigadier General

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1 Scott Spellmon, dated October 28, to Lieutenant -- is
2 that LTG, lieutenant general?

3 A. Yes.

4 Q. -- Lieutenant General Todd Semonite. You
5 are not copied on this email. Several other senior
6 Corps civilian and military officers are copied on it.
7 Can you read, please, the first sentence of Brigadier
8 General Spellmon's email to Lieutenant General
9 Semonite, what that says?

10 A. It says, "Sir - based on yesterday's
11 escalation of force incidents, we are going to revoke
12 the Special Use Permit for the Standing Rock Sioux
13 Tribe camp effective immediately."

14 Q. And Brigadier General Spellmon is the --
15 at this point, still the division commander?

16 A. Yes, correct.

17 Q. And Lieutenant General Todd Semonite is
18 who again?

19 A. He's the commander of the Corps of
20 Engineers.

21 Q. The entire Corps of Engineers?

22 A. Yes.

23 Q. And earlier, you testified that you
24 believed that the events that we have discussed with
25 respect to the tendering of the special use permit to

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1 the Standing Rock Sioux Tribe and the failure to comply
2 with the requirements of the permit that you
3 tendered -- namely, the insurance and reclamation and
4 other requirements to guarantee that United States
5 property was not damaged, and if it was, there was
6 funds available to deal with that -- that the series of
7 events, you testified, created some confusion. Is that
8 accurate?

9 A. Yes.

10 Q. Is that the explanation for why the head
11 of the division reported to the head of the Corps of
12 Engineers' operational efforts? Is that why Brigadier
13 General Spellmon suggests to his superior that there is
14 a special use permit that could be revoked?

15 A. I'm not sure what the question is. Can
16 you --

17 Q. Do you think that the confusion that you
18 testified arose in September, a month prior, created
19 confusion for your commanding senior officers within
20 the division and within the Corps itself?

21 A. I do think there was general confusion,
22 yes.

23 Q. How else would you explain that the head
24 of the Corps' Northwest Division suggested to his
25 commanding officer, the chief of the Army Corps of

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1 Engineers, that there was even a permit in existence
2 that could be revoked?

3 A. Well, I think, in general, you know, we
4 authored the permit. We expected the applicant to
5 follow through with it. Eventually, it became clear
6 that they were not going to be able to, and then there
7 was a leadership decision to revoke the permit.

8 Q. There was no existing permit, is what I
9 understood your testimony to be.

10 A. Yeah, the process was not completed.

11 Q. I'm sorry?

12 A. The process was not completed for the
13 permitting.

14 Q. So what was there to revoke?

15 A. The offer for the permit was revoked.

16 Q. So is what you're saying this concerns is
17 a withdrawal of the tendered permit?

18 A. I'm not sure what "tender" means in a
19 legal sense; but, yes, that sounds right.

20 Q. Okay. And here we are, a month and ten
21 days later after it was offered, right?

22 A. Yes.

23 Q. Okay. And that action that the Brigadier
24 General is reporting up the chain, way up the chain,
25 says it's based on yesterday's escalation of force

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1 incidents. What is he referring to?

2 MS. BOBET: Objection; calls for
3 speculation, lack of personal knowledge.

4 Q. (BY MR. SEBY) Do you know, Lieutenant
5 Colonel Startzell, what events the Brigadier General is
6 referring to?

7 A. I can't remember, specifically. I do know
8 that there were a couple of flashpoints in the
9 protests. So my --

10 Q. The Brigadier General's email -- pardon
11 me. I didn't mean to interrupt you.

12 A. So my best guess is there was --
13 eventually there was a -- there was a blockage of the
14 bridge on one of the highways. And that would be my
15 guess as to what this incident was about or what he's
16 referring to.

17 Q. On your screen is a statement within the
18 Brigadier General's email. Can you see it? It's
19 entitled "Our rationale."

20 A. Yes, I see that.

21 Q. Okay. Colonel Henderson is not on this
22 email, nor are you. But were you aware of these events
23 on -- it would have been October 27th?

24 A. Probably, yeah. Without knowing exactly
25 which event this is, it's hard to say, but I think I

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1 was probably aware of it, yes.

2 Q. So the first bullet under the "Our
3 rationale" in Brigadier General Spellmon's report up
4 the chain, high up the chain, says, number one,
5 "Yesterday's events proved again this is not a peaceful
6 or prayerful protest." Is that accurate?

7 A. That's what it says, yes.

8 Q. Do you have any reason to dispute the
9 Brigadier General's statement?

10 A. I think there were incidents that were not
11 peaceful, yes, that is correct.

12 Q. Okay. And the second bullet, "Life,
13 health, safety for all in the area are at risk." Do
14 you disagree or agree with that statement?

15 A. I mean, that was his assessment. I would
16 say that there were definitely life, health, and safety
17 concerns.

18 Q. Third bullet, "There has been much
19 reckless endangerment." Do you have any reason to
20 agree or disagree with that statement?

21 A. No.

22 Q. Next one, next and last rationale reported
23 by Brigadier General Spellmon to his superiors, Corps
24 leadership, "There has been damage and destruction of
25 private property." Do you have any reason to disagree

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<p style="text-align: right;">Page 202</p> <p>1 with that?</p> <p>2 A. No. That is true.</p> <p>3 Q. Thank you.</p> <p>4 MR. SEBY: Please go to Exhibit 47.</p> <p>5 Q. (BY MR. SEBY) Before we discuss</p> <p>6 Exhibit 47, I want to conclude discussion of the</p> <p>7 Standing Rock Sioux Tribe special use permit. I</p> <p>8 understand your testimony, in short, to be that there</p> <p>9 was no final valid permit issued to the Standing Rock</p> <p>10 Sioux Tribe, because they were provided a permit and</p> <p>11 did not comply with the requirements of the permit;</p> <p>12 and, therefore, no special use permit was ever granted.</p> <p>13 Apart from the language used by certain Corps</p> <p>14 individuals, the Standing Rock Sioux Tribe were never</p> <p>15 granted a valid existing and final special use permit;</p> <p>16 is that correct?</p> <p>17 A. Yes, that's correct.</p> <p>18 Q. Did the Corps of Engineers grant a special</p> <p>19 use permit in August or September or October to any</p> <p>20 other entity to which they complied with the terms of</p> <p>21 the permit in order to be able to have a special use</p> <p>22 permit authorizing their presence on Army Corps of</p> <p>23 Engineers property associated with lands owned and</p> <p>24 managed by the Corps of Engineers in Morton County,</p> <p>25 North Dakota?</p>	<p style="text-align: right;">Page 204</p> <p>1 A. I do.</p> <p>2 Q. Could you read the first sentence, please.</p> <p>3 A. "Enclosed for your review and execution is</p> <p>4 a Special Use Permit."</p> <p>5 Q. And the second sentence.</p> <p>6 A. "This Permit application is in response to</p> <p>7 the request that you made to Colonel Henderson,</p> <p>8 District Commander and Eric Stasch, Oahe Project</p> <p>9 Manager in a meeting at the SRST Tribal Headquarters on</p> <p>10 October 7, 2016."</p> <p>11 Q. And the date of this email from</p> <p>12 Mr. Sheffield to LaDonna Brave Bull is November 1st,</p> <p>13 2016, right?</p> <p>14 A. Yes.</p> <p>15 Q. So basically a month later, Mr. Sheffield</p> <p>16 is sending a permit application to LaDonna Brave Bull</p> <p>17 referencing a conversation Ms. Brave Bull had with</p> <p>18 Colonel Henderson on October 7th. Is that how you read</p> <p>19 the email introduction?</p> <p>20 A. Yeah, that looks right -- that sounds</p> <p>21 right.</p> <p>22 Q. Are you -- why is it that the Corps is</p> <p>23 providing a permit application and map to an applicant?</p> <p>24 A. I mean, I think because she asked for it.</p> <p>25 Q. Okay. Would you agree with me that the</p>
<p style="text-align: right;">Page 203</p> <p>1 A. I don't believe any of the special use</p> <p>2 permits were finalized.</p> <p>3 Q. Thank you. Okay. Now I would like to</p> <p>4 discuss Exhibit 47, please.</p> <p>5 (Deposition Exhibit 47, remotely</p> <p>6 introduced and provided electronically to the court</p> <p>7 reporter.)</p> <p>8 Q. This is an email of -- a string of emails</p> <p>9 consisting of two emails. Could we go to the first of</p> <p>10 the two. Pardon me, this is three emails; yes, three</p> <p>11 emails. The first in the chain is an email from</p> <p>12 Phillip Sheffield to LaDonna Brave Bull. And it's</p> <p>13 copied to Eric Stasch, the Oahe Project Manager, and</p> <p>14 John Voeller, also with the Oahe Project; is that</p> <p>15 correct? Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. You were not copied on this particular</p> <p>18 email, but when we get to the top of the chain, you are</p> <p>19 copied on the email transmitting these two earlier</p> <p>20 ones. Do you know who Phillip Sheffield is?</p> <p>21 A. I don't remember his position, but I</p> <p>22 believe that he worked at the Oahe Project Office.</p> <p>23 Q. Okay. And there in front of us on the</p> <p>24 screen is an email from Mr. Sheffield to LaDonna Brave</p> <p>25 Bull. Do you see that right there?</p>	<p style="text-align: right;">Page 205</p> <p>1 normal course is that an applicant retrieves the</p> <p>2 application form the Corps posts on its website, fills</p> <p>3 it out, and then submits it, not the other way around?</p> <p>4 A. Yes, that would be, normally, the process.</p> <p>5 Q. Thank you. Did this permit application</p> <p>6 get returned to the Corps signed and with demonstrated</p> <p>7 satisfaction of any of the financial security,</p> <p>8 insurance, or reclamation bonds required?</p> <p>9 A. I don't think it did. I don't recall it</p> <p>10 being finalized.</p> <p>11 Q. So in that respect, it's similar to the</p> <p>12 Standing Rock Sioux Tribe permit that was offered to</p> <p>13 them but not finalized, ever?</p> <p>14 A. Yes.</p> <p>15 Q. All right. And just to finish out this</p> <p>16 string, the top email, which you are copied on, from</p> <p>17 Mr. Stasch, the Project Manager for the Oahe Project,</p> <p>18 to a number of individuals, which include you in that</p> <p>19 list, this distribution. Mr. Stasch is reporting that</p> <p>20 Mr. Sheffield, after not hearing from Ms. Brave Bull</p> <p>21 for 17 days, sent her a follow-up email which said --</p> <p>22 do you see it there, just down below? "LaDonna Brave</p> <p>23 Bull: Oahe Project, Corps of Engineers is still</p> <p>24 awaiting the proof of the required Bond and insurance</p> <p>25 for your requested Special event permit. At this time,</p>

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<p style="text-align: right;">Page 206</p> <p>1 we have not received any documents other than the</p> <p>2 permit previously submitted. We also need you to</p> <p>3 verify that the map provided is the area you want to</p> <p>4 permit." Is that accurate?</p> <p>5 A. Yes, that's how it reads.</p> <p>6 Q. Do you have any reason to disagree with</p> <p>7 that statement made in that email by Mr. Sheffield to</p> <p>8 Ms. Brave Bull?</p> <p>9 A. No.</p> <p>10 Q. Did you ever speak with Ms. Brave Bull?</p> <p>11 A. Not that I can recall.</p> <p>12 Q. Have you ever met her?</p> <p>13 A. I don't remember meeting her, no.</p> <p>14 MR. SEBY: Okay. All right. If we could</p> <p>15 go to Exhibit 41, please.</p> <p>16 (Deposition Exhibit 41, remotely</p> <p>17 introduced and provided electronically to the court</p> <p>18 reporter.)</p> <p>19 Q. (BY MR. SEBY) This is an email from</p> <p>20 Colonel Henderson to an individual known as Faith</p> <p>21 Spotted Eagle. The email is dated Friday,</p> <p>22 November 11th, 2016. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And do you note that you're copied on this</p> <p>25 email?</p>	<p style="text-align: right;">Page 208</p> <p>1 A. The one that starts, "On Tuesday"?</p> <p>2 Q. No. The paragraph below that, sir.</p> <p>3 A. Okay. "We have coordinated this with</p> <p>4 Morton County law enforcement as well as DAPL; they are</p> <p>5 aware of this ceremony and support our efforts to</p> <p>6 facilitate this."</p> <p>7 Q. Who is the "we" that Colonel Henderson is</p> <p>8 referring to, as you understand it?</p> <p>9 A. I'm not certain. I'm not sure if that</p> <p>10 is --</p> <p>11 Q. Could he be referring to the Oahe Project?</p> <p>12 A. He could be referring to the Oahe Project</p> <p>13 and/or the District Headquarters.</p> <p>14 Q. In Omaha?</p> <p>15 A. Right.</p> <p>16 Q. At which you're the deputy district</p> <p>17 commander --</p> <p>18 A. Right.</p> <p>19 Q. -- at this time? Is it your understanding</p> <p>20 and position that the district coordinated with Morton</p> <p>21 County law enforcement as of the date of this email?</p> <p>22 A. I believe we had.</p> <p>23 Q. Are you also in agreement with Colonel</p> <p>24 Henderson -- the rest of his statement in that</p> <p>25 sentence, ". . . they are aware of this ceremony and</p>
<p style="text-align: right;">Page 207</p> <p>1 A. Yes.</p> <p>2 Q. Amongst a host of Corps colleagues.</p> <p>3 Colonel Henderson's email is -- the text of which is</p> <p>4 below right there, it says, "Faith, Thank you for</p> <p>5 coordinating this request to conduct a prayer service</p> <p>6 on Corps-managed federal lands near Oahe."</p> <p>7 Are you aware of what Colonel Henderson</p> <p>8 is referring to as thanking Ms. Spotted Eagle for</p> <p>9 coordinating?</p> <p>10 A. I know the event that it's referring to,</p> <p>11 but I don't remember the details about how that</p> <p>12 coordination happened.</p> <p>13 Q. Next sentence, please, if you could read</p> <p>14 that in full.</p> <p>15 A. "All that is left for you to do is review</p> <p>16 and sign the attached request; we tried to input as</p> <p>17 much of the data as we could ascertain to make it</p> <p>18 easier for you."</p> <p>19 Q. Is this another instance where the Corps</p> <p>20 filled out and provided a draft permit without an</p> <p>21 applicant -- submitting a completed form application?</p> <p>22 A. Yes, I believe it is.</p> <p>23 Q. And the third sentence of Mr. -- Colonel</p> <p>24 Henderson's communication that we're looking at as</p> <p>25 Exhibit 41, do you see that?</p>	<p style="text-align: right;">Page 209</p> <p>1 support our efforts to facilitate this"?</p> <p>2 A. I believe that's correct.</p> <p>3 Q. You do. Okay. Lieutenant Colonel</p> <p>4 Startzell, how did you or others in the district, over</p> <p>5 which you're the deputy district commander, how did you</p> <p>6 make Morton County law enforcement officials aware of</p> <p>7 this?</p> <p>8 A. I can't remember the specifics, but it's</p> <p>9 likely that we called Sheriff Kirchmeier to talk to him</p> <p>10 about the request and our assessments of it.</p> <p>11 Q. And as of the date of this email, Friday,</p> <p>12 November 11th, 2016, at 2:28 p.m., you had done that?</p> <p>13 A. I can't say for sure the timing, but I</p> <p>14 believe so.</p> <p>15 Q. Well, the way Colonel Henderson's email</p> <p>16 reads, sir, right there in the box in front of us on</p> <p>17 the screen, they are aware, not -- not, we will make</p> <p>18 them aware. They are aware, as in, it has happened</p> <p>19 already, right?</p> <p>20 A. That's how it sounds in the email.</p> <p>21 Q. Okay. Thank you.</p> <p>22 MR. SEBY: Could you please turn to</p> <p>23 Exhibit 42.</p> <p>24 (Deposition Exhibit 42, remotely</p> <p>25 introduced and provided electronically to the court</p>

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<p style="text-align: right;">Page 210</p> <p>1 reporter.)</p> <p>2 Q. (BY MR. SEBY) Exhibit 42 is an email --</p> <p>3 an exhibit with one email communication on it. And</p> <p>4 before we discuss that, I want to reiterate the date of</p> <p>5 the exhibit we just discussed, Exhibit 41, which is</p> <p>6 Colonel Henderson's email to Faith Spotted Eagle</p> <p>7 providing a completed permit for her to review and</p> <p>8 sign. And he said, "All that is left for you to do is</p> <p>9 review and sign . . ."; dated November 11, 2016.</p> <p>10 Exhibit 42 is an email, Lieutenant Colonel</p> <p>11 Startzell, from you to Sheriff Kirchmeier, dated</p> <p>12 November 14th, three days later than Colonel</p> <p>13 Henderson's email to Faith Spotted Eagle. And your</p> <p>14 message to the Sheriff says, "I've attached a copy of</p> <p>15 the . . . permit that Colonel Henderson sent [sic] to</p> <p>16 Faith Spotted Eagle a couple of days ago. We still do</p> <p>17 not have her returned signed copy."</p> <p>18 What I'd like to understand, please, and</p> <p>19 have you answer, is, if Colonel Henderson said to Faith</p> <p>20 Spotted Eagle, three days before your communication</p> <p>21 with Sheriff Kirchmeier, how could Colonel Henderson</p> <p>22 have told her you had already coordinated with Sheriff</p> <p>23 Kirchmeier and he was aware and okay with it? How</p> <p>24 could that be?</p> <p>25 A. I don't understand the question.</p>	<p style="text-align: right;">Page 212</p> <p>1 you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And the day of your saying that to the</p> <p>4 sheriff is November 14th, 2016, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And the attachment to your letter is a</p> <p>7 special use permit, which you've testified the Corps</p> <p>8 completed and filled out for Ms. Faith Spotted Eagle.</p> <p>9 And it says the permit is issued to Faith Spotted Eagle</p> <p>10 "For the period of 1 day (November 15, 2016) from</p> <p>11 9:00 a.m. to 5:00 p.m." That is the attachment to your</p> <p>12 email, the day prior, to Sheriff Kirchmeier. Do you</p> <p>13 agree with that?</p> <p>14 A. Yes.</p> <p>15 Q. So one day before the event to occur, by</p> <p>16 the special use permit that you've offered that she</p> <p>17 needs to sign and return, you're giving a copy to the</p> <p>18 sheriff, correct?</p> <p>19 A. Yes, for his awareness.</p> <p>20 Q. Okay. Would you look at the attachment,</p> <p>21 please, to the email, both of which are Exhibit 42.</p> <p>22 Second page, please -- third page. Is this document</p> <p>23 signed?</p> <p>24 A. No.</p> <p>25 Q. Is it signed by Faith Spotted Eagle, the</p>
<p style="text-align: right;">Page 211</p> <p>1 Q. I'm trying to understand how you</p> <p>2 communicated with Sheriff Kirchmeier three days after</p> <p>3 Colonel Henderson told Faith Spotted Eagle that you had</p> <p>4 done it. It seems to me that that was not an accurate</p> <p>5 statement. And I'm trying to understand, from you,</p> <p>6 whether that's true or you have an explanation for the</p> <p>7 disparity.</p> <p>8 MS. BOBET: Objection, mischaracterizes</p> <p>9 the evidence.</p> <p>10 A. Yeah. It's possible I talked to him on</p> <p>11 the phone the week before. I don't remember the</p> <p>12 details, though, timing-wise.</p> <p>13 Q. (BY MR. SEBY) Well, your email says,</p> <p>14 ". . . thank you for taking the time to give me a call</p> <p>15 back." Did that telephone call take place other than</p> <p>16 the day that you're sending him the email to confirm</p> <p>17 it?</p> <p>18 A. I don't know.</p> <p>19 Q. Had you, prior to this email of</p> <p>20 November 14th, provided the copy of the permit that was</p> <p>21 tendered or offered to Faith Spotted Eagle, prior to</p> <p>22 the time that you're providing it here?</p> <p>23 A. I don't know.</p> <p>24 Q. Your email, sir, says, "We still do not</p> <p>25 have her returned signed copy"; is that correct? Do</p>	<p style="text-align: right;">Page 213</p> <p>1 applicant?</p> <p>2 A. No, it's not.</p> <p>3 Q. Is the permit signed by the commander of</p> <p>4 the Omaha District?</p> <p>5 A. No.</p> <p>6 Q. Is it signed by any Corps individual or</p> <p>7 representative?</p> <p>8 A. No.</p> <p>9 Q. Do you know, Lieutenant Colonel Startzell,</p> <p>10 that Ms. Faith Spotted Eagle ever returned the signed</p> <p>11 permit offered to her?</p> <p>12 A. I do not remember, but I don't recall</p> <p>13 seeing it.</p> <p>14 Q. Were you ever told that she did?</p> <p>15 A. Not that I remember.</p> <p>16 Q. Did you participate in this permit</p> <p>17 consideration and process?</p> <p>18 A. I believe on this one I recommended that</p> <p>19 the permit be offered, because of -- the purpose was --</p> <p>20 it didn't seem very harmful, didn't seem harmful at</p> <p>21 all, given the number and the demographic that we were</p> <p>22 dealing with.</p> <p>23 Q. What do you mean by "number"?</p> <p>24 A. It was a small group of people, and they</p> <p>25 were mostly elderly people.</p>

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<p style="text-align: right;">Page 214</p> <p>1 Q. How did you know how to fill out the</p> <p>2 permit for Ms. Faith Spotted Eagle? Based upon</p> <p>3 conversations with her?</p> <p>4 MS. BOBET: Objection, foundation. You</p> <p>5 can answer.</p> <p>6 A. So I did not -- I did not fill this out</p> <p>7 for her.</p> <p>8 Q. (BY MR. SEBY) Who did?</p> <p>9 A. I don't know for sure, but I believe it</p> <p>10 was the Project Office.</p> <p>11 Q. Okay. Did the Project Office ever tell</p> <p>12 you where they got the information to put in the</p> <p>13 document?</p> <p>14 A. I believe they did, but I don't remember</p> <p>15 the details.</p> <p>16 Q. Okay. Did the event take place?</p> <p>17 A. Yes.</p> <p>18 Q. Did it take place after the Corps had a</p> <p>19 signed and returned permit document?</p> <p>20 A. No, I don't believe so.</p> <p>21 Q. Did Colonel Henderson ever sign this</p> <p>22 document?</p> <p>23 A. I don't know. Not that I'm aware of.</p> <p>24 MR. SEBY: Would you please turn to</p> <p>25 Exhibit 44 -- excuse me, Exhibit 43. I skipped one.</p>	<p style="text-align: right;">Page 216</p> <p>1 A. The drill pad is where they position the</p> <p>2 hydraulic horizontal drilling machinery.</p> <p>3 Q. For?</p> <p>4 A. So that they can drill under the river.</p> <p>5 Q. Who is "they"?</p> <p>6 A. The "they" is Dakota Access.</p> <p>7 Q. So are you saying this was the Dakota</p> <p>8 Access Pipeline construction drill pad location?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And that is the subject area for</p> <p>11 the special use permit that the Corps tendered to Faith</p> <p>12 Spotted Eagle?</p> <p>13 A. No, it was not the same location.</p> <p>14 Q. I'm not following what you're saying.</p> <p>15 A. The drill pad was west of the actual</p> <p>16 prayer site, from my understanding. It wasn't on-site</p> <p>17 at the drill pad, from my understanding.</p> <p>18 Q. The drill pad is not located on Corps of</p> <p>19 Engineers property; is that correct?</p> <p>20 A. Correct.</p> <p>21 Q. So I believe -- and you tell me if I don't</p> <p>22 have it right -- but that's not what this is talking</p> <p>23 about. It's talking about Corps land east of the drill</p> <p>24 pad. So it's Corps land that's near that private</p> <p>25 property where the drill pad is located, is where the</p>
<p style="text-align: right;">Page 215</p> <p>1 (Deposition Exhibit 43, remotely</p> <p>2 introduced and provided electronically to the court</p> <p>3 reporter.)</p> <p>4 MR. SEBY: Please, if you could enlarge</p> <p>5 that for Mr. -- Lieutenant Colonel Startzell to see.</p> <p>6 Q. (BY MR. SEBY) And please go -- there's</p> <p>7 two emails in this string. Please go to the first one</p> <p>8 down below. This email is from an individual by the</p> <p>9 name of James P. Thomas, Assistant United States</p> <p>10 Attorney, United States Attorney's Office, Bismarck,</p> <p>11 North Dakota. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And Mr. Thomas is writing to Mr. Tracy,</p> <p>14 the district counsel. You've identified him earlier.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And Mr. Thomas from the United States</p> <p>18 Attorney's Office for the District of North Dakota is</p> <p>19 asking the district's counsel, Mr. Tracy, "Any word on</p> <p>20 the status of the application re activities tomorrow on</p> <p>21 Corps land east of the drill pad?" What drill pad is</p> <p>22 he referring to?</p> <p>23 A. I think he's referring to the drill pad</p> <p>24 that's on the western side of the river.</p> <p>25 Q. What is a drill pad, sir?</p>	<p style="text-align: right;">Page 217</p> <p>1 application for activities is referenced?</p> <p>2 A. Yes, that sounds right.</p> <p>3 Q. Okay. And that inquiry is coming from an</p> <p>4 Assistant United States Attorney to the Corps, through</p> <p>5 its counsel, asking for an update. And he says, "I'd</p> <p>6 like to be able to report back to law enforcement." Do</p> <p>7 you see that?</p> <p>8 A. Yes.</p> <p>9 Q. So that same day -- well, let me back up.</p> <p>10 The United States Assistant U.S. Attorney's email</p> <p>11 copies -- in addition to Mr. Tracy, copies the United</p> <p>12 States Attorney, Chris Myers, for the District of North</p> <p>13 Dakota, as well as an individual named Paul Ward. Do</p> <p>14 you know who Mr. Ward is?</p> <p>15 A. I can't remember his position, but</p> <p>16 U.S. Marshals Service.</p> <p>17 Q. Okay. I think if we scrolled up you would</p> <p>18 see his title in the signature block. Do you see that?</p> <p>19 A. Okay.</p> <p>20 Q. He's the United States Marshal for the</p> <p>21 District of North Dakota, is the way I read his</p> <p>22 signature block. Do you agree that's what it says?</p> <p>23 A. Yes.</p> <p>24 Q. In Mr. Thomas's email to Mr. Tracy, and</p> <p>25 copied to the U.S. Attorney and to the United States</p>

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1 Marshal for the District of North Dakota, before the
2 Marshal responds, there's an interim email just above
3 the one we're on from Mr. Thomas to Mr. Tracy. And
4 it's an email replying to Mr. Thomas's inquiry. And
5 could you read what Mr. Voeller says to the group,
6 including those gentlemen we've just mentioned?

7 A. "Sir, The Corps is going to allow Prayer
8 Ceremony to take place tomorrow on the USACE property
9 to the east of the drill pad. Individuals will be
10 accessing the area by boat instead of by land. Major
11 [sic] Startzell will be notifying Sheriff Kirchmeier of
12 this. There will be 3 USACE personnel escorting the
13 group into the site for the ceremony."

14 Q. Okay. "The Corps is going to allow the
15 Prayer Ceremony to take place tomorrow . . ." Was that
16 after a valid special use permit had been obtained?

17 A. I think that was after it was offered.

18 Q. Again, never signed by Ms. Spotted Eagle
19 or Colonel Henderson?

20 A. Correct, to my knowledge.

21 Q. On what basis does Mr. Voeller say to the
22 U.S. Attorney for the District of North Dakota and the
23 head of the United States Marshals Service for the
24 District that the Corps is going to allow that to
25 happen, then?

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1 MS. BOBET: Objection; calls for
2 speculation, lack of personal knowledge.

3 Q. (BY MR. SEBY) I'm asking you, Lieutenant
4 Colonel Startzell, on what basis do you understand the
5 Corps' decision to allow the prayer ceremony to take
6 place on Corps property was issued? What authority?

7 A. The district commander was aware of the
8 ceremony and approved it.

9 Q. The District Commander Colonel Henderson,
10 is that who you're referring to?

11 A. Yes.

12 Q. And he did so in the absence of a special
13 use permit, is what I understand your testimony to be.

14 A. A completed permit, yes.

15 Q. A non-final permit?

16 A. The permit had been offered, but was not
17 finalized.

18 Q. Okay. Can you go to the top line,
19 Mr. Ward's -- Marshal Ward's reply to Mr. Voeller's
20 statement indicating the Corps was going to allow it to
21 occur, and read that aloud, if you would, please.

22 A. "With all due respect, this is
23 disappointing to say the least. You have just allowed
24 protesters behind all law enforcement defenses. I
25 disagree wholeheartedly and I am amazed that no one at

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1 the corps [sic] agrees with law enforcement."

2 Q. Were you aware of that statement at the
3 time it was made?

4 A. Yes, I believe I did see this.

5 Q. What is your opinion with respect to the
6 statement by the United States Marshal?

7 A. My opinion was that we had assessed the
8 risk, and that this was a very low-risk activity. And
9 we did not agree that these seven individuals were a
10 threat.

11 Q. Again, this was before it occurred, right?

12 A. Yes.

13 Q. How many people accompanied the Corps at
14 this event?

15 A. I don't know.

16 Q. How did you know it was seven individuals?

17 A. Based on the permit request.

18 Q. Were there any invited guests that joined
19 the event?

20 A. I don't know, but it is possible.

21 Q. Are you aware that the permit that the
22 Corps filled out and offered to Ms. Spotted Eagle on
23 the day before it occurred, per your email transmitting
24 it to Sheriff Kirchmeier, if it had been signed and
25 finalized would have authorized 30 additional guests to

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1 accompany the event?

2 A. I did not hear that detail, no.

3 Q. Who was responsible for evaluating whether
4 this was an acceptable low-risk event, as you
5 estimated, as it occurred? Whose judgment was that
6 placed upon?

7 A. So I believe it was a discussion between
8 the Project Office personnel and Colonel Henderson.
9 And I believe I was involved in that discussion as
10 well.

11 Q. Who on the ground accompanying the group
12 that went to use this area at the location noted in our
13 discussions -- who was responsible for determining if
14 the facts on the ground met compliance with the Corps'
15 expectations for the event?

16 A. Eric Stasch was on the ground, John
17 Voeller was on the ground, and I believe we had one
18 other Project Office employee there.

19 Q. Were they in touch with you prior to the
20 event occurring with regard to the assessment of risk?

21 A. Yes.

22 Q. And what were those communications to you
23 and the Colonel?

24 A. We told our employees there to evaluate
25 the situation when they got to the meet-up location and

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<p style="text-align: right;">Page 222</p> <p>1 to assess the risk, based on what they saw with the</p> <p>2 crowd. And if they felt safe at all -- or unsafe at</p> <p>3 all, that we would call it off. And that morning, I</p> <p>4 believe they called us to give us their assessment of</p> <p>5 the situation.</p> <p>6 MR. SEBY: Would you turn to Exhibit 45,</p> <p>7 please.</p> <p>8 (Deposition Exhibit 45, remotely</p> <p>9 introduced and provided electronically to the court</p> <p>10 reporter.)</p> <p>11 Q. (BY MR. SEBY) This is an exhibit with</p> <p>12 three emails in it -- or four, pardon me. One, the</p> <p>13 second from the top, is from Colonel Henderson to</p> <p>14 Ms. Faith Spotted Eagle on Tuesday, November 15th.</p> <p>15 Would that be -- 2016. Was that the day after the</p> <p>16 event took place?</p> <p>17 A. I forget the day of the event, but around</p> <p>18 the same time.</p> <p>19 Q. I think the event took place on the 15th</p> <p>20 of November, so the day prior. Are we in agreement</p> <p>21 about that?</p> <p>22 A. I'd have to go back and look at it; but</p> <p>23 yeah.</p> <p>24 Q. What does the second paragraph of Colonel</p> <p>25 Henderson's short email say?</p>	<p style="text-align: right;">Page 224</p> <p>1 Kirchmeier belatedly. And so what obstacles exist?</p> <p>2 MS. BOBET: Objection, mischaracterizes</p> <p>3 evidence.</p> <p>4 A. Yeah. I don't know what other obstacles</p> <p>5 he'd be referring to.</p> <p>6 Q. (BY MR. SEBY) Okay. Bottom line, though,</p> <p>7 is, at this time, "Thanks for your patience; hope</p> <p>8 everything goes well tomorrow." At that time Colonel</p> <p>9 Henderson made that statement, there was no special use</p> <p>10 permit issued to Ms. Faith Spotted Eagle signed or in</p> <p>11 final form; is that correct?</p> <p>12 A. I believe that's correct.</p> <p>13 MR. SEBY: Okay. Could you turn to</p> <p>14 Exhibit 46, please. Before we do that, I'm sorry, if</p> <p>15 we could put Exhibit 45 back up.</p> <p>16 Q. (BY MR. SEBY) Just to confirm our</p> <p>17 discussion and my understanding, Colonel Henderson's</p> <p>18 November 15th, 2016 email says, "I understand we have a</p> <p>19 plan to accommodate this event tomorrow in spite</p> <p>20 several obstacles." The "tomorrow" to which Colonel</p> <p>21 Henderson is referring is Wednesday, November 26th</p> <p>22 (sic), as the date of the event, correct?</p> <p>23 A. I'm not really sure November 16th is --</p> <p>24 Q. Well, we're going to go back over what we</p> <p>25 just talked about again. On Tuesday, November 15,</p>
<p style="text-align: right;">Page 223</p> <p>1 A. It says, "I understand that we have a plan</p> <p>2 to accommodate this event tomorrow in spite several</p> <p>3 obstacles. Thanks for your patience; hope everything</p> <p>4 goes well tomorrow."</p> <p>5 Q. And the date of Colonel Henderson's email</p> <p>6 in which he says that?</p> <p>7 A. On the 15th.</p> <p>8 Q. Okay. So he's saying the event is going</p> <p>9 to take place tomorrow, right?</p> <p>10 A. That's how it sounds.</p> <p>11 Q. Which would be Wednesday, November 16th.</p> <p>12 What is your understanding of what Colonel Henderson</p> <p>13 was referring to, "I understand that we have a plan to</p> <p>14 accommodate this event tomorrow in spite several</p> <p>15 obstacles"? What obstacles might he be referring to?</p> <p>16 MS. BOBET: Objection, calls for</p> <p>17 speculation.</p> <p>18 MR. SEBY: I'm asking him to identify</p> <p>19 whether he knows what the reference to "obstacles" may</p> <p>20 be; and if so, what they are.</p> <p>21 A. I'm not sure exactly, but I would guess</p> <p>22 the coordination with Dakota Access and the local law</p> <p>23 enforcement to make sure they were aware of it.</p> <p>24 Q. (BY MR. SEBY) Well, you made them aware.</p> <p>25 We just talked about your communications to Sheriff</p>	<p style="text-align: right;">Page 225</p> <p>1 2016, at 4:21 a.m., Colonel Henderson's email says, "I</p> <p>2 understand that we have a plan to accommodate this</p> <p>3 event tomorrow in spite several obstacles . . . hope</p> <p>4 everything goes well tomorrow." So if this email was</p> <p>5 sent on November 15th, what date would "tomorrow"</p> <p>6 reference?</p> <p>7 A. I suppose it would be November 16th.</p> <p>8 Q. Thank you.</p> <p>9 MR. SEBY: Now, please turn to Exhibit 46.</p> <p>10 If you could enlarge that for the witness to see.</p> <p>11 (Deposition Exhibit 46, remotely</p> <p>12 introduced and provided electronically to the court</p> <p>13 reporter.)</p> <p>14 Q. (BY MR. SEBY) Okay. This is an email,</p> <p>15 Lieutenant Colonel Startzell, that is from Colonel</p> <p>16 Henderson. What is the reference to Exchange</p> <p>17 Administrative Group? Is that a group that you're part</p> <p>18 of?</p> <p>19 A. No. I don't know what that group is.</p> <p>20 Q. So in any event, Colonel Henderson's email</p> <p>21 is to Lowry Crook. And you've told us that the SES is</p> <p>22 a reference to what?</p> <p>23 A. Senior Executive Service.</p> <p>24 Q. And HD -- or HQDA ASA means?</p> <p>25 A. That is Headquarters Department of the</p>

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1 Army, Assistant Secretary of the Army.

2 Q. So Mr. Crook is in that office?

3 A. Yeah. It looks like he is in the

4 Assistant Secretary of the Army's Office.

5 Q. And the email is copied to Brigadier

6 General Spellmon and Major General Donald Jackson,

7 correct?

8 A. Yes.

9 Q. And it says, "FW: Check In." What

10 document is being forwarded here? What email string is

11 being forwarded? I only see one communication on this

12 email string at this exhibit. Do you know what that

13 is?

14 A. No.

15 Q. Okay. If we could look at the text of

16 Colonel Henderson's email to the Office of the

17 Assistant Secretary of the Army and Brigadier General

18 Spellmon and Major General Donald Jackson. What does

19 the first paragraph of Colonel Henderson's report to

20 those individuals say?

21 A. "Ms. Darcy asked me to send you some

22 information on the prayer service that we facilitated

23 for the Yankton Sioux Tribal elders and religious

24 leaders yesterday on USACE-managed federal land

25 immediately in front of the drill pad on the west side

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1 of Oahe reservoir."

2 Q. And the next paragraph uses that acronym

3 BLUF again, doesn't it?

4 A. Yes.

5 Q. Apologize, but will you refresh my memory

6 what BLUF stands for?

7 A. Bottom line up front.

8 Q. And continue reading with the sentence

9 there.

10 A. "[Bottom line up front] is that we issued

11 a special use permit for Faith Spotted Eagle and up to

12 30 people to conduct a prayer ceremony on USACE land in

13 vicinity of the pipeline trace. The prayer group had

14 to transit by private boat because DAPL denied access

15 to cross their land to get to the site (after approving

16 our request last week). They were escorted by Corps

17 personnel in a government owned boat, and they did not

18 leave USACE land at any time. We accompanied this

19 group to ensure no interaction between them and DAPL

20 security or Morton County law enforcement."

21 Q. Do you agree with Colonel Henderson's

22 statement to those individuals on this email that the

23 Corps issued a special use permit for this event?

24 A. I agree that it was offered, but not

25 completed.

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1 Q. Thank you. Just to understand this, what

2 you're saying is there was no final permit issued or

3 granted to Ms. Spotted Eagle or her guests?

4 A. Not that I'm aware of.

5 Q. Thank you. Lieutenant Colonel Startzell,

6 have you understood my questions during this deposition

7 today, unless in circumstances where you've indicated

8 otherwise to me and we've clarified them and discussed

9 them?

10 A. Yes.

11 Q. Is there anything, sir, that you'd like to

12 add?

13 A. Just one thing. At the beginning of the

14 conference you asked if I had discussed this deposition

15 with anyone, and I said my boss. I also discussed it

16 with my wife. So I just want to clarify that she knew

17 that I was coming in to do this.

18 Q. Sure. Thank you. You also said earlier

19 that -- I asked you if you had any blame assigned to

20 the State of North Dakota, and I understood your answer

21 to be no. Do you -- were there any instances during

22 the DAPL protest where you felt law enforcement in

23 North Dakota did not do what you specifically asked

24 them to do?

25 A. No. I'd say, in general, they were very

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1 supportive. And they had their own tough mission going

2 on. I think they -- on a couple cases, they probably

3 didn't render as much aid as they could have; but, in

4 general, I think they were supportive.

5 Q. Render aid to whom?

6 A. With regard to encouraging people to leave

7 USACE land.

8 Q. What authority does the State of North

9 Dakota have with regard to federal property managed by

10 the Corps?

11 MS. BOBET: Objection, to the extent it

12 calls for a legal opinion.

13 Q. (BY MR. SEBY) Did the Corps of Engineers

14 ever ask the State of North Dakota to encourage people

15 to leave Corps property?

16 A. I believe at some point the district

17 commander asked them to enforce state laws as

18 necessary.

19 Q. Did -- to your knowledge, did you or

20 Colonel Henderson ever tell the State of North Dakota

21 at any level that you wanted, as the landowner, to have

22 trespassers removed from the property?

23 A. I don't remember. I don't remember if we

24 ever asked them to remove trespassers.

25 Q. Then what do you mean by you don't think

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1 they rendered aid adequately in the form of encouraging

2 people to leave? Wouldn't it have been more proper if

3 you had asked them to do that?

4 MS. BOBET: Objection, compound.

5 A. So I believe what we told them was that

6 they had the authority to go onto federal land to

7 enforce local and state laws. And they were, in some

8 cases, hesitant to do that.

9 Q. (BY MR. SEBY) At what point?

10 A. I would say through much of the time of

11 this protest activity.

12 Q. What evidence do you have for suggesting

13 that North Dakota, at any level, was asked by the Corps

14 to remove trespassing individuals on its property?

15 A. I don't have any evidence of that.

16 Q. All right. Thank you. Lieutenant Colonel

17 Startzell, have I been respectful and courteous to you

18 throughout this deposition?

19 A. Yes.

20 MR. SEBY: At this time, Ms. Bobet, I have

21 no further questions and pass the witness to you.

22 MS. BOBET: Thank you. Just give me one

23 moment here. Can you hear me?

24 MR. SEBY: Yes.

25 MS. BOBET: I don't have any questions for

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1 the Lieutenant Colonel at this time.

2 MR. SEBY: And I don't have any further

3 follow-up questions. So, Lieutenant Colonel Startzell,

4 thank you for your time today.

5 THE DEPONENT: Thank you. Thank you,

6 Gail.

7 THE REPORTER: You're welcome. Ms. Bobet,

8 would you like Lieutenant Startzell to read and sign

9 his transcript?

10 MS. BOBET: Yes, please.

11 THE REPORTER: Would you like an etran,

12 and do you need another copy of the exhibits scanned to

13 you?

14 MS. BOBET: We don't need the exhibits.

15 And an electronic transcript is perfectly fine.

16 THE REPORTER: Mr. Seby, do you need

17 another copy of the exhibits, or just an etran?

18 MR. SEBY: An etran, please.

19 THE REPORTER: And no exhibits?

20 MR. SEBY: Yes, ma'am. No, thank you.

21 THE REPORTER: Thank you.

22 WHEREUPON, the within proceedings were

23 concluded at the approximate hour of 4:31 p.m. MST on

24 the 19th day of November, 2021.

25 * * * * *

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1 I, LIEUTENANT COLONEL JAMES T. STARTZELL,

2 do hereby certify that I have read the above and

3 foregoing deposition and that the same is a true and

4 accurate transcription of my testimony, except for

5 attached amendments, if any.

6 Amendments attached () Yes () No

7

8

9

10 LIEUTENANT COLONEL JAMES T. STARTZELL

11

12

13 The signature above of LIEUTENANT COLONEL

14 JAMES T. STARTZELL was subscribed and sworn to or

15 affirmed before me in the county of _____, state of

16 Colorado, this _____ day of _____, 2021.

17

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21 Notary Public

22 My commission expires

23

24

25 State of North Dakota, 11/19/21 (go)

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1 REPORTER'S CERTIFICATE

2 STATE OF COLORADO)

3) ss.

4 CITY AND COUNTY OF DENVER)

5 I, GAIL OBERMEYER, Registered Professional

6 Reporter and Notary Public ID 19994012647, State of

7 Colorado, do hereby certify that previous to the

8 commencement of the examination, the said LIEUTENANT

9 COLONEL JAMES T. STARTZELL verbally declared his

10 testimony in this matter is under penalty of perjury;

11 that the said deposition was taken in machine shorthand

12 by me at the time and place aforesaid and was

13 thereafter reduced to typewritten form; that the

14 foregoing is a true transcript of the questions asked,

15 testimony given, and proceedings had.

16 I further certify that I am not employed

17 by, related to, nor of counsel for any of the parties

18 herein, nor otherwise interested in the outcome of this

19 litigation.

20 IN WITNESS WHEREOF, I have affixed my

21 signature this 8th day of December, 2021.

22 My commission expires May 20, 2023.

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Lieutenant Colonel James T. Startzell

November 19, 2021

<p>1 Errata Sheet</p> <p>2</p> <p>3 NAME OF CASE: Plaintiff vs UNITED STATES</p> <p>4 DATE OF DEPOSITION: 11/19/2021</p> <p>5 NAME OF WITNESS: Lieutenant Colonel James T. Startzell</p> <p>6 Reason Codes:</p> <p>7 1. To clarify the record.</p> <p>8 2. To conform to the facts.</p> <p>9 3. To correct transcription errors.</p> <p>10 Page ____ Line ____ Reason ____</p> <p>11 From ____ to ____</p> <p>12 Page ____ Line ____ Reason ____</p> <p>13 From ____ to ____</p> <p>14 Page ____ Line ____ Reason ____</p> <p>15 From ____ to ____</p> <p>16 Page ____ Line ____ Reason ____</p> <p>17 From ____ to ____</p> <p>18 Page ____ Line ____ Reason ____</p> <p>19 From ____ to ____</p> <p>20 Page ____ Line ____ Reason ____</p> <p>21 From ____ to ____</p> <p>22 Page ____ Line ____ Reason ____</p> <p>23 From ____ to ____</p> <p>24</p> <p>25</p>	<p>Page 234</p>